Supreme Court, U.S.
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In the Supreme Court of the United States

JOSEPH P. WARD,

Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 501(a) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 501(a), provides that certain union officials owe fiduciary duties to their union and its membership. Section 501(b) then provides *union members* with a cause of action (upon leave of the court and for good cause shown) to sue for the breach of those duties if their union has failed or refused "to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization." *Id.* § 501(b).

The question presented in this case is whether Congress implied a cause of action for *unions* to sue their officials under Section 501 of the Labor-Management Reporting and Disclosure Act of 1959, despite limiting the express cause of action under that section to suits by union members.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISION INVOLVED 1

STATEMENT 3

A. The District Court Proceedings 4

B. The Court of Appeals' Decision 7

REASONS FOR GRANTING THE PETITION 10

I. THE LOWER COURTS ARE DEEPLY DIVIDED AS TO WHETHER UNIONS HAVE AN IMPLIED CAUSE OF ACTION UNDER SECTION 501 OF THE LMRDA 10

II. THIS COURT SHOULD CLARIFY THE WEIGHT OF THE PRESUMPTION THAT STATUTES CONTAINING AN EXPRESS CAUSE OF ACTION DO NOT ALSO IMPLY ADDITIONAL CAUSES OF ACTION 15

TABLE OF CONTENTS—continued

Page

A. The Court Of Appeals Failed To Apply The "Elemental Canon" Presuming Against Implied Additions To A Statute's Express Remedies 15

B. Congress Intended To Provide A Federal Cause Of Action Only To The Members Of Unions That Have Refused To Exercise Their Existing State Law Remedies Or To Seek Other Appropriate Relief 18

III. THIS IS A RECURRING AND IMPORTANT ISSUE REGARDING THE SUBJECT MATTER JURISDICTION OF THE FEDERAL COURTS 25

CONCLUSION 26

APPENDIX

International Union of Operating Engineers, Local 150, AFL-CIO v. *Ward*, 563 F.3d 276 (7th Cir. 2009) 1a

International Union of Operating Engineers, Local 150, AFL-CIO v. *Ward*, 2008 WL 474368 (N.D. Ill. 2008) 27a

TABLE OF AUTHORITIES

Page(s)

Cases

Alexander v. *Sandoval*, 532 U.S. 275 (2001) 17

Ashcroft v. *Iqbal*, 129 S. Ct. 1937 (2009) 15

Bhd. of Ry., Airline and Steamship Clerks, Freight Handlers, Express and Station Employees v. *Orr*, No. CIV-1-76-86, 1977 WL 1661 (E.D. Tenn. May 18, 1977) 14

Bldg. Material & Dump Truck Drivers, Local 420 v. *Traweek*, 867 F.2d 500 (9th Cir. 1989) ..... *passim*

Botany Worsted Mills v. *United States*, 278 U.S. 282 (1929) 16

Cannon v. *Univ. of Chicago*, 441 U.S. 677 (1979) 24

Cort v. *Ash*, 422 U.S. 66 (1975) 20

Crosley v. *Katz*, Civ. A. No. 88-2437, 1988 WL 94283 (E.D. Pa. Sept. 9, 1988) 13, 20

Dunlop-McCullen v. *Pascarella*, No. 97-Civ.-0195(PLK)(DFE), 2002 WL 31521012 (S.D.N.Y. Nov. 13, 2002) 12, 25

Glenn v. *Mason*, No. 79 Civ. 3918 CES, 1980 WL 140904 (S.D.N.Y. Aug. 18, 1980) 14

TABLE OF AUTHORITIES—continued

Page(s)

Graphic Arts Int'l Union, AFL-CIO v. *Graphic Arts Int'l Union, Local No. 529*, 529 F. Supp. 587 (W.D. Mo. 1982) 13

Guidry v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365 (1990) 3, 25

Int'l Bhd. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO v. *Freeman*, 683 F. Supp. 1190 (N.D. Ill. 1988) 13

Int'l Longshoremen's Ass'n, AFL-CIO v. *Spear, Wilderman, Borish, Endy, Spear & Runckel*, 995 F. Supp. 564 (E.D. Pa. 1998) 13, 26

Int'l Longshoremen's Ass'n, Steamship Clerks Local 1624 v. *Va. Int'l Terminals*, 914 F. Supp. 1335 (E.D. Va. 1996) 13, 26

Int'l Union of Elec., Elec., Salaried, Machine & Furniture Workers, AFL-CIO v. *Statham*, 97 F.3d 1416 (11th Cir. 1996)..... *passim*

Int'l Union, Sec., Police, and Fire Prof'ls of Am. v. *United Gov't Sec. Officers of Am. Int'l Union*, No. Civ. A. 04-2242-KHV, 2004 WL 3019430 (D. Kan. Dec. 30, 2004)..... 12, 25

Karahalios v. *Nat'l Fed'n of Fed. Employees, Local 1263*, 489 U.S. 527 (1989)) 6, 15

TABLE OF AUTHORITIES—continued

Page(s)

Local 15 of the Int'l Bhd. of Elec. Workers v. *O'Reilly*, No. 02 C 6464, 2003 WL 29896 (N.D. Ill. Jan 2, 2003)..... 12, 18, 25

Local 191, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, and Helpers of Am. v. *Rossetti*, Civ.A No. B-90-74(WWE), 1990 WL 128241 (D. Conn. Aug. 23, 1990) 13

Local 443, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, and Helpers of Am. v. *Pisano*, 753 F. Supp. 434 (D. Conn 1991)..... 13

Local 624, Int'l Union of Operating Eng'rs v. *Byrd*, 659 F. Supp. 274 (S.D. Miss. 1986) 13

Local 1150 Int'l Bhd. of Teamsters v. *SantaMaria*, 162 F. Supp. 2d 68 (D. Conn. 2001)..... 12, 18, 20, 22, 26

Local No. 163, Int'l Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of Am. v. *Watkins*, 207 A.2d 776 (Pa. 1965)..... 21

Middlesex County Sewerage Auth. v. *Nat'l Sea Clammers Ass'n*, 453 U.S. 1 (1981) 17

Morris v. *Scardelletti*, C.A. No. 94-3557, 1995 WL 120224 (E.D. Pa. Mar. 14, 1995)..... 14

TABLE OF AUTHORITIES—continued

Page(s)

Nat'l Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Div. of the Laborers' Int'l Union of N. Am. v. *Johnson (In re Johnson)*, 139 B.R. 163 (Bankr. E.D. Va. 1992) 14

Nat'l R.R. Passenger Corp. v. *Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453 (1974) 15, 16

Nw. Airlines, Inc. v. *Transport Workers Union of Am.*, 451 U.S. 77 (1981) 15, 17

Operative Plasterers & Cement Masons Int'l Ass'n of the U.S. and Canada, AFL-CIO v. *Benjamin*, 776 F. Supp. 1360 (N.D. Ind. 1991) 14, 26

Safe Workers' Org., Chapter No. 2 v. *Ballinger*, 389 F. Supp. 903 (S.D. Ohio 1974) 13

Stanton v. *Shields*, No. C-79-1211, 1979 WL 2009 (N.D. Cal. July 20, 1979) 13

Teamsters, Chauffeurs, Warehousemen and Helpers of Am., Local 20 v. *Leu*, No. C 76-221, 1976 WL 1685 (N.D. Ohio Oct. 22, 1976) 13

Teamsters, Chauffeurs, Warehousemen and Helpers, Local 764 v. *Greenawalt*, 880 F. Supp. 1076 (M.D. Pa. 1995) 14

TABLE OF AUTHORITIES—continued

Page(s)

Touche Ross & Co. v. *Redington*, 442 U.S. 560 (1979) 16, 17

Transamerica Mortgage Advisors, Inc. v. *Lewis*, 444 U.S. 11 (1979) 15, 24

Truck Drivers, Warehousemen & Helpers of Jacksonville, Local Union No. 512 v. *Baker*, 473 F. Supp. 1120 (M.D. Fla. 1979) 13

United Transp. Union v. *Bottalico*, 120 F. Supp. 2d 407 (S.D.N.Y. 2000) 12, 18, 19, 21, 26

Univs. Research Ass'n v. *Coutu*, 450 U.S. 754 (1981) 15, 24

Statutes

28 U.S.C. § 1331 5

28 U.S.C. § 1367 5

29 U.S.C. § 401(a) 19

29 U.S.C. § 401(b) 4, 19

29 U.S.C. § 501 ..... 3, 10

29 U.S.C. § 501(a) 4

29 U.S.C. § 501(b) 3, 4, 10, 23

N.Y. Labor Law §§ 722, 723, 725 20

TABLE OF AUTHORITIES—continued

Page(s)

Other Authorities

86 Cong. Rec. S5858 22

S. 748, 86th Cong. § 301(b) 20

United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, Constitution of the International Union art. 48, § 5 (adopted June 2006) 23

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-26a) is reported at 563 F.3d 276. The judgment of the district court (App., *infra*, 27a-37a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 16, 2009. On May 13, 2009, Justice Stevens granted an extension of the time to file the petition until August 14, 2009. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

In pertinent part, Section 501 of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. § 501, provides:

> (a) * * * The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any

matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) * * * When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the

instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

STATEMENT

Section 501 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 501, provides *union members* with an express cause of action to sue union officials who breach their fiduciary duty to the union, *id.* § 501(b). As the Seventh Circuit remarked in its decision below, however, "[d]istrict and circuit courts alike are divided" on whether Congress *also* intended to provide an *implied* cause of action to the unions themselves. App., *infra*, 14a & n.6 (collecting cases). This Court has similarly recognized that "[c]ourts have reached inconsistent positions" on that question. *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 374 n.16 (1990).

In this case, the district court concluded that Congress did not intend to imply a cause of action for unions under Section 501. App., *infra*, 36a. In reversing that decision, the Seventh Circuit held that Congress did imply such a cause of action despite having limited Section 501's express cause of action to union members. App., *infra*, 25a-26a. In so holding, the Seventh Circuit joined the Eleventh Circuit in direct conflict with the Ninth Circuit. District courts, moreover, have long been hopelessly divided on the issue.

Congress enacted the LMRDA "to combat corruption on the part of union officials and to protect the interests of the membership." *Guidry*, 493 U.S.

at 370. At the time, congressional investigations had revealed "a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures." 29 U.S.C. § 401(b). As part of its response, Congress stated in Section 501(a) that "[t]he officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group," and went on to list a number of specific fiduciary duties that those union officials owe to their union and its membership: to hold money and property solely for the benefit of the organization, to refrain from dealing with the union as an adverse party, and to account to the union for any profits received in connection with union business. *Id.* § 501(a).

In Section 501(b), Congress expressly provided a federal remedy for the breach of those fiduciary duties. A union member alleging that a union official committed such a breach must first request that the union "sue or recover damages or secure an accounting or other appropriate relief." *Id.* § 501(b). If the union fails to do so "within a reasonable time," the member may bring suit in state or federal court "for the benefit of the labor organization" and "upon leave of the court obtained upon verified application and for good cause shown." *Ibid.* Recovery in such an action belongs to the union, less any reasonable legal fees and expenses allotted to the litigating member by the trial judge. *Ibid.*

A. The District Court Proceedings

The International Union of Operating Engineers, Local 150, AFL-CIO ("Local 150" or "the Union"), represents approximately 22,000 members mostly

located in the Midwest. See Compl. ¶ 4. In January 2007, the Union filed a complaint in the United States District Court for the Northern District of Illinois against its Treasurer, Joseph P. Ward, who at the time was campaigning to unseat Local 150's incumbent President-Business Manager, William E. Dugan. The complaint alleged that thirteen years earlier, when Ward and a group of investors purchased land adjacent to a Local 150 district office in Joliet, Illinois, Ward breached his fiduciary duty to the Union. The Union charged that, before making that 1994 land purchase, Ward knew that Dugan was interested in buying the property for the Union, but that Ward told the seller that the Union was no longer interested and told Dugan that the property was no longer for sale. See App., *infra*, 28a; Compl. ¶¶ 9-14.

The Union brought two claims. First, it alleged that Ward violated Section 501 of the LMRDA, and claimed that the district court had jurisdiction over such a claim brought by the Union pursuant to 28 U.S.C. § 1331. Second, it brought a state law breach of fiduciary duty claim, and asserted the district court's supplemental jurisdiction under 28 U.S.C. § 1367. Ward moved to dismiss the Complaint on the ground that Section 501 does not create a right of action for unions, but only (under the specified conditions) for union members. See App., *infra*, 27a-29a.

The district court agreed and granted Ward's motion to dismiss. See App., *infra*, 27a-37a. Judge Ruben Castillo recognized that the "[f]ederal courts are divided on the issue of whether Section 501 gives a union, as opposed to a union member, a private

right of action" and that "[t]he Supreme Court declined to resolve the issue" in *Guidry*. App., *infra*, 31a; see also *id.* at 32a, 34a (collecting cases). After examining the conflicting views on this question, the court found "persuasive the analysis of courts holding that the plain language of Section 501 does not support a private right of action for unions," App., *infra*, 31a-32a, and rejected the position taken by "courts [that] have looked beyond the plain language * * * to find an implied right of action for unions," App., *infra*, 34a.

The court explained that "Section 501's language—providing an express remedy to union *members*—weighs heavily against finding legislative intent to give a cause of action to unions." App., *infra*, 35a (internal quotation marks omitted). Applying the "'elemental canon of statutory construction that where a statute expressly provides a remedy, courts must be especially reluctant to provide additional remedies,'" the court said that "'in the absence of strong indicia of contrary congressional intent, [it was] compelled to conclude that Congress provided precisely the remedies it considered appropriate.'" App., *infra*, 32a (quoting *Karahalios* v. *Nat'l Fed'n of Fed. Employees, Local 1263*, 489 U.S. 527, 533 (1989)). "If Congress had wanted to give the union the same right of action that it explicitly provided to union members" the court continued, "it could have done so." App., *infra*, 33a.

Furthermore, the district court concluded, Section 501 lacks sufficient indicia that Congress intended to imply a cause of action in addition to the one that it provided expressly. Indeed, explained the court, "neither the statute's structure or legislative

history support finding an implied right of action for unions." App., *infra*, 35a. When it provided a cause of action for union members but not unions, Congress "could conceivably have intended to relegate unions to sue in state court due to the federal policy of noninterference in internal union affairs." App., *infra*, 33a. The provision preventing a union member's suit until the union refuses to bring its own suit simply reflects that "[u]nions still have the right to sue in state court for breach of fiduciary duty by its officers or other representatives." *Ibid.*

For these reasons, the court stated that it would not "enlarge its jurisdiction by permitting the union to sue in federal court" because Section 501 admits of no "explicit authorization from Congress." App., *infra*, 32a. Having dismissed the Section 501 claim, the district court declined to exercise supplemental jurisdiction over the Union's state law breach of fiduciary duty claim, and dismissed it without prejudice to its renewal in state court. See App., *infra*, 36a-37a.

B. The Court of Appeals' Decision

The Union appealed the district court's decision to dismiss its complaint, and the United States Court of Appeals for the Seventh Circuit reversed. See App., *infra*, 1a-26a.

Like the district court, the court of appeals noted that "[d]istrict and circuit courts alike are divided on whether § 501 creates an implied federal cause of action for labor organizations" and that "the Supreme Court * * * declined to resolve the issue" in *Guidry*. App., *infra*, 14a-15a & n.6 (collecting cases). In particular, "the Ninth and Eleventh Circuits, have

addressed the question, and they have reached opposite conclusions." App., *infra*, 15a; see also *Bldg. Material & Dump Truck Drivers, Local 420* v. *Traweek*, 867 F.2d 500 (9th Cir. 1989) (holding there is no implied cause of action for unions); *Int'l Union of Elec., Elec., Salaried, Mach. & Furniture Workers, AFL-CIO* v. *Statham*, 97 F.3d 1416 (11th Cir. 1996) (holding there is an implied cause of action for unions).

The Seventh Circuit first considered the Ninth Circuit's "four grounds" for rejecting a union's Section 501 claim in *Traweek*.

> First, the court focused on the plain language of subsection (b), stating that '[t]he clear language of the statute does not contemplate a suit brought by a union.' [867 F.2d] at 506. Second, the court claimed adherence to 'the federal policy of noninterference in the internal affairs of unions and labor matters.' *Id.* Third, the court believed its decision to be consistent with 'the general principle . . . that the scope of federal jurisdictional statutes should be construed narrowly.' *Id.* at 507. And fourth, the Ninth Circuit found evidence of Congress's intent to grant the remedy solely to the union members in § 501(b)'s requirement that union members request leave of the court before suing. *Id.* at 506.

App., *infra*, 15a-16a. The court of appeals then examined the Eleventh Circuit's contrary decision in *Statham* "that Congress intended labor organizations to have access to the federal courts for suits to enforce the fiduciary duties imposed by § 501(a)." App., *infra*,

16a. First, the Eleventh Circuit concluded that "the duty-creating language of § 501(a) * * * 'would make no sense'" without a corresponding implied cause of action for unions. *Ibid.* (quoting 97 F.3d at 1420). Second, "[t]he Eleventh Circuit also looked to the LMRDA's legislative history for evidence of Congress's intent" and "noted that the Act was a broad and wide ranging attempt to reign in corruption within union leadership." App., *infra*, 17a (citing 97 F.3d at 1420-21).

The court of appeals elected to "break the tie" between the split circuits, and agreed with the Eleventh Circuit. App., *infra*, 18a. The Seventh Circuit held that Section 501(a)'s "series of specific fiduciary duties" implies "corresponding rights in the [union] beneficiaries" and that "[t]he statutory language implied the creation of a federal remedy for the union as well." App., *infra*, 20a-21a. Because the express cause of action provided to union members in Section 501(b) is a "derivative action," the court reasoned that its existence "reinforces rather than undermines the implication" that Section 501(a) also creates a cause of action for labor organizations. App., *infra*, 22a. The court "part[ed] company," however, "with the Eleventh Circuit's use in *Statham* of the LMRDA's legislative history." App., *infra*, 25a n.9 (citing 97 F.3d at 1420).

The Seventh Circuit thus concluded "that labor organizations have an implied cause of action under § 501(a) to sue in federal court for violation of the fiduciary duties imposed by the statute." App., *infra*, 26a. This petition followed.

REASONS FOR GRANTING THE PETITION

I. THE LOWER COURTS ARE DEEPLY DIVIDED AS TO WHETHER UNIONS HAVE AN IMPLIED CAUSE OF ACTION UNDER SECTION 501 OF THE LMRDA

There is a longstanding and deep divide among the courts of appeals and district courts over whether Congress provided unions with an *implied* cause of action in Section 501 of the LMRDA, 29 U.S.C. § 501, in addition to the *express* cause of action it provided union members, *id.* § 501(b). In reversing the district court and concluding that such an implied cause of action exists, the Seventh Circuit joined the Eleventh Circuit, see *Int'l Union of Elec., Elec., Salaried, Mach. & Furniture Workers, AFL-CIO* v. *Statham*, 97 F.3d 1416, 1418-1421 (1996), in direct conflict with the Ninth Circuit, *Bldg. Material and Dump Truck Drivers, Local 420* v. *Traweek*, 867 F.2d 500, 506-507 (1989). The court of appeals recognized that "[d]istrict and circuit courts alike are divided on whether § 501 creates an implied federal cause of action for labor organizations," App., *infra*, 14a; it considered the Ninth and Eleventh Circuits' "opposite conclusions," App., *infra*, 15a, and by "break[ing] the tie" it deepened that circuit split, App., *infra*, 18a.

In *Traweek*, a union sued two of its former officers for, *inter alia*, violating Section 501 by withdrawing union fees without proper authorization in order to reimburse another officer's legal fees. 867 F.2d at 503-505. The Ninth Circuit reversed a judgment for the union, holding that it lacked subject matter jurisdiction because Section 501 does not provide unions with a cause of action. *Id.* at 505-507.

The court noted as an initial matter that the "literal language of the statute is clear—it authorizes an *individual union member* to bring suit if a union refuses or fails to sue." *Id.* at 506. That express cause of action included a "requirement that the individual member request leave of the court to bring suit" on the union's behalf, and that requirement "offers proof," the court said, "that Congress intended that this remedy be available solely to individual union members." *Ibid.* The court determined that the "better-reasoned and more persuasive interpretation" of the statute was that it contained only the limited cause of action for union members, which was "created by Congress to address abuse of position by union officers in situations where members have no effective remedy for such abuse except to petition the federal courts for help." *Ibid.* It found such an interpretation of congressional intent to be consistent with "the federal policy of noninterference in the internal affairs of unions and labor matters," *id.* at 506, and "with the general principle * * * that the scope of federal jurisdictional statutes should be construed narrowly," *id.* at 507.

The Ninth Circuit concluded, therefore, that because "[t]he clear language of the statute does not contemplate a suit brought by a union, but only addresses the availability of a suit when the union refuses to sue," it lacked subject matter jurisdiction over the union's suit. *Id.* at 506-507.

The Eleventh Circuit arrived at the opposite conclusion in *Statham*. See 97 F.3d 1416. Recognizing that the question had been "thoroughly examined by many courts, and [that] they have arrived at opposite conclusions," *id.* at 1418 & n.2

(collecting cases), the court concluded that, although "[s]ubsection 501(b) does not itself confer jurisdiction over suits by [a] union, * * * it assumes that a union can sue its officials" because "otherwise, it would be futile for individuals to request the union to sue and senseless to make the individuals engage in a futile act," *id.* at 1419. Responding to the obvious counterpoint—that Congress could well have intended for unions to pursue existing tort remedies in state courts—the court relied on "[t]he legislative history of the LMRDA" as showing that Congress believed "existing state law remedies for union officials' misconduct were inadequate." *Id.* at 1420. "[F]rom this background," the court concluded that an implied cause of action existed "to supplement the remedies available to unions" under state law. *Ibid.*

Reflecting the split among the circuits, district courts routinely arrive at conflicting conclusions on the question presented in this case. On one side, many courts have taken the view adopted by the district court below, App., *infra*, 27a-37a, and by the Ninth Circuit in *Trawick*, 867 F.2d at 506-507, that the plain language, purpose, and drafting history of Section 501 demonstrate that Congress did *not* intend to imply a cause of action for unions. See *Int'l Union, Sec., Police, and Fire Prof'ls of Am.* v. *United Gov't Sec. Officers of Am. Int'l Union*, No. Civ. A. 04-2242-KHV, 2004 WL 3019430, at *2-4 (D. Kan. Dec. 30, 2004); *Local 15 of the Int'l Bhd. of Elec. Workers* v. *O'Reilly*, No. 02 C 6464, 2003 WL 29896, at *1-3 (N.D. Ill. Jan 2, 2003); *Dunlop-McCullen* v. *Pascarella*, No. 97-Civ.-0195(PLK)(DFE), 2002 WL 31521012, at *7-9 (S.D.N.Y. Nov. 13, 2002); *Local 1150 Int'l Bhd. of Teamsters* v. *SantaMaria*, 162 F. Supp. 2d 68, 75-81 (D. Conn. 2001); *United Transp. Union* v. *Bottalico*,

120 F. Supp. 2d 407, 407-410 (S.D.N.Y. 2000); *Int'l Longshoremen's Ass'n, AFL-CIO* v. *Spear, Wilderman, Borish, Endy, Spear & Runckel*, 995 F. Supp. 564, 566-573 (E.D. Pa. 1998); *Local 443, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, and Helpers of Am.* v. *Pisano*, 753 F. Supp. 434, 435-436 (D. Conn 1991); *Local 191, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, and Helpers of Am.* v. *Rossetti*, Civ.A No. B-90-74(WWE), 1990 WL 128241, at *2 (D. Conn. Aug. 23, 1990); *Int'l Bhd. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO* v. *Freeman*, 683 F. Supp. 1190, 1191-1193 (N.D. Ill. 1988); *Crosley* v. *Katz*, Civ. A. No. 88-2437, 1988 WL 94283, at *1-3 (E.D. Pa. Sept. 9, 1988); *Local 624, Int'l Union of Operating Eng'rs* v. *Byrd*, 659 F. Supp. 274, 275-276 (S.D. Miss. 1986); *Graphic Arts Int'l Union, AFL-CIO* v. *Graphic Arts Int'l Union, Local No. 529*, 529 F. Supp. 587, 594 (W.D. Mo. 1982); *Truck Drivers, Warehousemen & Helpers of Jacksonville, Local Union No. 512* v. *Baker*, 473 F. Supp. 1120, 1122-1124 (M.D. Fla. 1979); *Stanton* v. *Shields*, No. C-79-1211, 1979 WL 2009, at *1 (N.D. Cal. July 20, 1979); *Teamsters, Chauffeurs, Warehousemen and Helpers of Am., Local 20* v. *Leu*, No. C 76-221, 1976 WL 1685, at *1 (N.D. Ohio Oct. 22, 1976); *Safe Workers' Org., Chapter No. 2* v. *Ballinger*, 389 F. Supp. 903, 906-908 (S.D. Ohio 1974).

Other courts have taken the contrary position, adopted in this case by the court of appeals, App., *infra*, 1a-26a, and by the Eleventh Circuit in *Statham*, 97 F.3d 1416, that Section 501 provides unions with an implied cause of action despite Congress's decision to omit unions from the express cause of action set forth in Section 501(b). See *Int'l Longshoremen's Ass'n, Steamship Clerks Local 1624* v. *Va. Int'l*

Terminals, 914 F. Supp. 1335, 1338-1340 (E.D. Va. 1996); *Morris* v. *Scardelletti*, C.A. No. 94-3557, 1995 WL 120224, at *5-7 (E.D. Pa. Mar. 14, 1995); *Teamsters, Chauffeurs, Warehousemen and Helpers, Local 764* v. *Greenawalt*, 880 F. Supp. 1076, 1079-1081 (M.D. Pa. 1995); *Operative Plasterers & Cement Masons Int'l Ass'n of the U.S. and Canada, AFL-CIO* v. *Benjamin*, 776 F. Supp. 1360, 1363-1366 (N.D. Ind. 1991); *Glenn* v. *Mason*, No. 79 Civ. 3918 CES, 1980 WL 140904, at *1-2 (S.D.N.Y. Aug. 18, 1980); *Bhd. of Ry., Airline and Steamship Clerks, Freight Handlers, Express and Station Employees* v. *Orr*, No. CIV-1-76-86, 1977 WL 1661 (E.D. Tenn. May 18, 1977); *Nat'l Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Div. of the Laborers' Int'l Union of N. Am.* v. *Johnson* (*In re Johnson*), 139 B.R. 163, 171-172 (Bankr. E.D. Va. 1992).

The division among the circuit and district courts on the sole question presented in this case is both deep and longstanding. It has been nearly two decades since this Court recognized that split of authority in *Guidry*, and the intervening years have brought only further confusion and conflict among the lower courts. Guidance from this Court is necessary to resolve finally whether federal courts are free to entertain fiduciary duty claims by unions against their officials.

II. THIS COURT SHOULD CLARIFY THE WEIGHT OF THE PRESUMPTION THAT STATUTES CONTAINING AN EXPRESS CAUSE OF ACTION DO NOT ALSO IMPLY ADDITIONAL CAUSES OF ACTION

A. The Court Of Appeals Failed To Apply The "Elemental Canon" Presuming Against Implied Additions To A Statute's Express Remedies

This Court has been especially reluctant to discern causes of action out of congressional silence where the statute Congress enacted *does* specify *other* remedies. "[I]mplied causes of action are disfavored" as a general matter, *Ashcroft* v. *Iqbal*, 129 S. Ct. 1937, 1948 (2009), and that disfavor grows substantially when a statute already expresses a particular remedial scheme.

The Seventh Circuit's decision did not reflect that reluctance; there is simply no evidence that it heeded the "elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11, 19-20 (1979); see also *Karahalios* v. *Nat'l Federation of Fed. Employees, Local 1263*, 489 U.S. 527, 533 (1989); *Nw. Airlines, Inc.* v. *Transport Workers Union of Am.*, 451 U.S. 77, 94 n.30 (1981); *Univs. Research Ass'n* v. *Coutu*, 450 U.S. 754, 773 & n.24 (1981); *Nat'l R.R. Passenger Corp.* v. *Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 458 (1974). To the contrary, the court of appeals reasoned that Congress's creation of an express cause of action for union members "neither opens nor closes the federal courthouse to the unions themselves," and

therefore could be "further evidence" that Congress implied an additional cause of action for unions. App., *infra*, 23a. A statute's expression of particular remedies carries with it a negative implication, however. See *Nat'l R.R. Passenger Corp.*, 414 U.S. at 458 ("'When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.'") (quoting *Botany Worsted Mills* v. *United States*, 278 U.S. 282, 289 (1929)).

The court of appeals read very little into the fact that Section 501 "openly declares that union members may sue in federal court for violations of the duties that it establishes" but is "silent * * * on whether it creates a similar federal cause of action for unions." App., *infra*, 7a-8a. Because it failed to start with the presumption that Congress intended Section 501 to be enforced only by the remedy it expressly created—and nothing more—the Seventh Circuit gave short shrift to clear indications that Congress actually intended that unions would employ their existing state law tort remedies and other avenues for obtaining appropriate relief against officers who breached a fiduciary duty, and that the federal courts would get involved only when a member's union had failed or refused to do so. By so casually discounting such a likely explanation for Section 501's text, the court of appeals made "implying a private right of action on the basis of congressional silence" an all the more "hazardous exercise." *Touche Ross & Co.* v. *Redington*, 442 U.S. 560, 571 (1979).

Statutes containing an express cause of action are not simply agnostic as to whether additional causes of action are implied, however. The presence of express remedial provisions instead creates a

strong presumption that Congress has defined a statute's intended enforcement mechanisms with precision. As this Court explained in *Alexander* v. *Sandoval*, 532 U.S. 275 (2001),

> The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others. Sometimes the suggestion is so strong that it precludes a finding of congressional intent to create a private right of action, even though other aspects of the statute (such as language making the would-be plaintiff 'a member of the class for whose benefit the statute was enacted') suggest the contrary.

Id. at 290 (citations omitted); see also *Touche Ross & Co.*, 442 U.S. at 574 ("[W]e are *extremely reluctant* to imply a cause of action * * * that is significantly broader than the remedy that Congress chose to provide." (emphasis added)); *Nw. Airlines*, 451 U.S. at 93-94 ("The statutes make express provision for private enforcement in certain carefully defined circumstances. * * * The comprehensive character of the remedial scheme expressly fashioned by Congress *strongly evidences* an intent not to authorize additional remedies." (emphasis added)). The limitations that Congress places on a statute's express remedies are not simply one among many co-equal factors to ponder when weighing whether an implied cause of action also exists; this Court has stated plainly that when determining whether Congress intended to create an implied cause of action, one must look "*particularly* to the provisions made therein for enforcement and relief." *Middlesex County Sewerage Auth.* v. *Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 13 (1981) (emphasis added).

In sharp contrast to the Seventh Circuit's reasoning, many of the courts that have *declined* to recognize a cause of action for unions under Section 501 have highlighted the significance of that statute's express cause of action. In this case, for example, the district court held that "Section 501's language—providing an express remedy to union members—'weighs heavily against finding legislative intent to give a cause of action' to unions." App., *infra*, 35a (quoting *SantaMaria*, 162 F. Supp. 2d at 80-81); see also *O'Reilly*, 2003 WL 29896, at *3 (applying the "elemental canon"). In another case, Judge Mukasey, in rejecting an implied cause of action for unions under Section 501, explained that "the absence of one specific remedy in a statute, when others are provided, creates a presumption that Congress did not intend to provide that remedy. Here, Congress expressly created a right of action for union members, but did not do so for unions." *Bottalico*, 120 F. Supp. 2d at 409; see also *id.* at 410 ("Congress's inclusion of a private action for union members but not for unions is *strong evidence* that Congress did not intend to create one for unions." (emphasis added)).

B. Congress Intended To Provide A Federal Cause Of Action Only To The Members Of Unions That Have Refused To Exercise Their Existing State Law Remedies Or To Seek Other Appropriate Relief

Had the Seventh Circuit begun by presuming that Section 501's express cause of action for union members is the precise remedy the Congress intended, and required strong evidence of contrary intent before implying an additional cause of action for unions, it likely would have concluded (as have

many other courts) that the statute's structure, purpose, and legislative history *reinforce* the conclusion suggested by the text: Congress intended to limit the federal cause of action it created to union members who face a particular set of circumstances. Congress's concern was for union members whose union had failed—despite the members' urging—to pursue state law or other appropriate remedies against an allegedly self- or double-dealing official.

First, Section 501's purpose—like that of the LMRDA generally—was to provide *employees* and *union members* with federal protection from miscreant unions and unscrupulous union officials. The LMRDA's declared purpose, after all, was to "protect *employees'* rights" and to "afford necessary protection of the *rights and interests of employees* and the public generally as they relate to the activities of labor organizations * * * and their officers and representatives." 29 U.S.C. § 401(a), (b) (emphasis added). Therefore, "it is the individual employee, not the union" that Congress mentioned specifically as the "focus of [its] solicitude." *Bottalico*, 120 F. Supp. 2d at 410. As the Ninth Circuit recognized in *Traweek*, Congress enacted Section 501 in the context of a "federal policy of noninterference in the internal affairs of unions and labor matters." 867 F. 2d at 506. As such, that Circuit concluded that the "better-reasoned and more persuasive interpretation" was that the statute addressed only those "situations where members have no effective remedy for such abuse [of position by union officers] except to petition the federal courts for help." *Ibid.*

Section 501's drafting history also demonstrates that Congress focused on providing remedies for

union *members*, and not for unions. For example, an early proposal for what became Section 501(b)'s express cause of action extended the right of action both to a union's *officers* and to its members. See S. 748, 86th Cong. § 301(b), *reprinted at* 1 National Labor Relations Board, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, at 109-110 (NLRB Legislative History). Section 501(b) as enacted, however, is limited to union members; it is unlikely (to say the least) that Congress rejected providing an *express* cause of action to union officers while at the same time intending to establish an *implied* cause of action for the unions themselves. See *Crosley*, 1988 WL 94283, at *3.

Second, Congress enacted Section 501 against a backdrop of existing state law remedies—in particular, the common law tort remedies that unions already enjoyed to enforce the obligations of their fiduciaries. It has long been true that where a "cause of action [is] one traditionally relegated to state law" it is generally "inappropriate to infer a cause of action based solely on federal law." *Cort* v. *Ash*, 422 U.S. 66, 78 (1975). Contemporaneous scholarship, one district court has noted, recognized that union officials were considered fiduciaries at common law, and that unions enjoyed common law remedies for any breach of those officials' corresponding duties. See *SantaMaria*, 162 F. Supp. 2d at 77 n.5 (collecting authorities). Then as now, state law spoke to a union official's fiduciary duties and provided sufficient avenues for their enforcement. See, *e.g.*, N.Y. Labor Law §§ 722, 723, 725 (providing for fiduciary obligations and their enforcement in state court); *Local No. 163, Int'l Union of United Brewery, Flour,*

Cereal, Soft Drink and Distillery Workers of Am. v. *Watkins*, 207 A.2d 776, 781 (Pa. 1965) (explaining that a union's "officers and similar agents" were "held to standards of good faith" under state law akin to those in Section 501). Indeed, in this case the union pressed a cause of action for breach of fiduciary duty under Illinois state law that was practically identical to its purported claim under Section 501. See App., *infra*, 36a-37a.

The Seventh Circuit assumed, however, that "[i]t would be anomalous indeed to read this statutory scheme as remitting the union's own suit * * * to state court." App., *infra*, 24a-25a. Congress did not see any such anomaly, however. Indeed, even the Seventh Circuit "part[ed] company" with the Eleventh Circuit's reliance on the LMRDA's legislative history for the supposition that Congress believed that the state remedies available to unions were inadequate. App., *infra*, 25a n.9 (citing *Statham*, 97 F.3d at 1420); see also *Bottalico*, 120 F. Supp. 2d at 409 ("The Eleventh Circuit * * * concluded that 'relegating' the union to suing under state law in state court would frustrate the purpose of § 501. * * * Wholly apart from the well documented hazards of relying on legislative history, the Eleventh Circuit's perceived authority is not persuasive." (internal citation omitted)). In fact, that legislative history is replete with indications that members of Congress intended for unions to continue pursuing their internal procedures and existing state law remedies, and that Section 501(b)'s express cause of action would provide a federal backstop only where a union has refused to do so. As one district court concluded after a detailed examination of the legislative history,

> it appears more likely based on the legislative history that Congress anticipated that unions often would be able to resolve problems internally or through state common law remedies, but, based on Congressional findings of widespread corruption in union leadership, granted members a federal remedy in those situations where the union failed to act to protect its interests and the interests of its members.

SantaMaria, 162 F. Supp. 2d at 80; see also *id.* at 77 ("[T]he legislative history demonstrates that Congress believed that state common law remedies were available for breach of fiduciary duty, even if not ideal"); *id.* at 77-78 ("Congress contemplated that the unions could bring suit in state court.").

For example, as senators debated a floor amendment that suggested language akin to what became Section 501(a), Senator Javits noted that such language "*will still leave the question of the remedy open*" and suggested that the Senate consider whether it wanted "to leave the question of the remedy open to any suit *aside from a Federal court suit which might lie by reason of diversity of citizenship* or any other ground outside the statute" or rather "to have a section of the bill which concerns itself with the right to sue, and to provide in that section a right *to the individual member* to sue when the union itself does not act, given a decent period of time." 86 Cong. Rec. S5858, *reprinted at* 2 NLRB Legislative History 1132 (emphasis added). Immediately after that statement, Senator McClellan introduced another amendment "dealing with the right to bring suits" that used language very similar to that now found at § 501(b). *Ibid.*

The Seventh Circuit's reliance on a misperceived "anomal[y]" in the statute if unions' suits are "remitt[ed] * * * to state court" also ignores a crucial part of § 501(b)'s text. App., *infra*, 24a-25a. Section 501(b)'s express cause of action is not conditioned only on the union refusing or failing "to sue"; the union must also have brushed off *all* of its possible remedies against the breaching officer—including internal or informal ones—to "recover damages or secure an accounting or other appropriate relief." 29 U.S.C. § 501(b). For example, many unions have procedures through which to secure restitution or an accounting from its officers; the successful pursuit of such efforts upon a member's demand would obviate the need for a federal lawsuit. See, *e.g.*, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, Constitution of the International Union art. 48, § 5 (adopted June 2006), *at* http://www.uaw.org/constitution/article48.cfm (providing a process for seeking the restitution of funds that a local union official received or spent improperly). The union's remedies at common law were just one arrow the union could loose against a duplicitous official; for a union member's suit to trigger federal jurisdiction, the union had to have refused to reach into its quiver entirely.

Finally, the court of appeals jumped too quickly to the conclusion that "[t]he statutory language implies the creation of a federal remedy for the union" from the fact that Section 501 benefits unions. App., *infra*, 21a. That unions stand to benefit from the duties listed in Section 501 does not mean Congress intended for unions to be the enforcer; "the language of the statute" must still indicate that Congress intended *that particular mode of*

enforcement. See *Univs. Research Ass'n* 450 U.S. at 771. Neither of the provisions that the court of appeals pointed to—namely, an official's duty to account for certain personal profits, and the avoidance of contracts that purport to exculpate a union official from his fiduciary obligations, see App., *infra*, 21a-22a—speak to whether Congress intended to permit unions to sue in federal court.

In *Transamerica*, for example, it was not enough that Section 206 of the Investment Advisers Act "establishes federal fiduciary standards to govern the conduct of investment advisers" and was "intended to benefit the clients of investment advisers." 444 U.S. at 17 (internal quotation marks omitted). Although "the Act's legislative history leaves no doubt that Congress intended to impose enforceable fiduciary obligations," this Court emphasized that it "is a different question" whether Congress intended to provide a private right of action to the beneficiaries of those obligations. *Id.* at 17-18. "[T]he mere fact that the statute was designed to protect advisers' clients does not require the implication of a private cause of action for damages on their behalf." *Id.* at 24. Instead, this Court concluded, "[i]n view of [the] express provisions for enforcing the duties imposed by § 206, it is highly improbable that 'Congress absentmindedly forgot to mention an intended private action.'" *Id.* at 20 (quoting *Cannon* v. *Univ. of Chicago*, 441 U.S. 677, 742 (1979) (Powell, J., dissenting)).

So too here. Congress surely believed that unions and their membership would benefit from an increased respect for fiduciary obligations among union officials. The express cause of action that

Congress provided to union members in Section 501(b), coupled with unions' existing internal and state law remedies, is sufficient to fulfill that purpose; nothing about the text or structure of the statute requires the implication of a federal cause of action for unions or the rebuttal of the presumption that Congress did not provide one.

III. THIS IS A RECURRING AND IMPORTANT ISSUE REGARDING THE SUBJECT MATTER JURISDICTION OF THE FEDERAL COURTS

As evidenced by the depth of the split among the lower courts on the question presented, it arises quite frequently. In the period since this Court recognized that split in *Guidry*, 493 U.S. at 374 n.16, courts have continued to reach "opposite conclusions" on the issue, see App., *infra*, 15a, and in doing so they routinely allude both to that division of authority and to the absence of a definitive resolution by this Court. See, *e.g.*, *Statham*, 97 F.3d at 1418 & n.2 ("The question of whether a union may assert a cause of action under section 501 of the [LMRDA] has been thoroughly examined by many courts, and they have arrived at opposite conclusions."); *Int'l Union, Sec., Police, and Fire Prof'ls of Am.*, 2004 WL 3019430, at *3 ("Courts have disagreed whether unions may bring suit under Section 501(b). * * * The Supreme Court has recognized the conflict but has not resolved it."); *O'Reilly*, 2003 WL 29896, at *2 ("There is a split of authority * * * as to whether Section 501(a) provides for a private right of action by a union."); *Pascarella*, 2002 WL 31521012, at *8 n.8 ("The Supreme Court has noted the split of authorities on this issue but has not resolved it."); *SantaMaria*, 162 F. Supp. 2d at 75 ("The circuits are split on this issue."); *Bottalico*, 120

F. Supp. 2d at 408 ("Two United States Courts of Appeals have considered whether a union may sue under § 501, and have reached differing conclusions."); *Spear, Wilderman, Borish, Endy, Spear & Runckel*, 995 F. Supp. at 568 ("The lower courts considering the issue * * * have reached different conclusions."); *Va. Int'l Terminals*, 914 F. Supp. at 1339 ("Courts have reached inconsistent positions on the question of whether § 501, standing alone, confers a cause of action on the union."); *Benjamin*, 776 F. Supp. at 1363 ("Several district courts also have relied on the statute's plain language to find that § 501(b) did not give a union the right to sue an individual union member in federal district court. * * * Other federal courts * * * have exercised jurisdiction over claims brought by unions.").

The sole question presented is both significant and important, involving nothing less than whether Congress intended that the federal courts would become the default forum in which unions would bring (or to which defendants could remove) bread-and-butter breach of fiduciary duty lawsuits against union officials. This case provides an opportunity for this Court to clarify whether the express cause of action in Section 501(b) is merely adjunct to a broader, implied cause of action through which any union may challenge the actions of its fiduciaries in federal court, or provides a stand-alone and limited supplement to a union's internal and common law remedies.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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AUGUST 2009

APPENDIX

In the
United States Court of Appeals
for the Seventh Circuit

No. 08-1631
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO,
Plaintiff-Appellant,

v.

JOSEPH P. WARD,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 07 C 00142—**Ruben Castillo**, *Judge.*

ARGUED OCTOBER 27, 2008
DECIDED APRIL 16, 2009

Before KANNE, WILLIAMS, and SYKES, *Circuit Judges.*

KANNE, *Circuit Judge.* In early 2007, the appellant, International Union of Operating Engineers, Local 150, AFL-CIO, filed a two-count complaint against one of its former officers, the appellee, Joseph P. Ward, in the Northern District of Illinois. Count I of the complaint alleged violations of § 501 of the Labor-Management and Reporting Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 501, which establishes fiduciary duties owed by a labor organization's officers to the organization and its

members. Following the close of discovery, the district court granted Ward's motion to dismiss the Union's § 501 claim for lack of subject-matter jurisdiction. The district court determined that § 501 did not provide the labor organization, as an entity, with a federal cause of action against its officers for alleged violations of the duties set forth therein. Local 150 appeals this decision. For the reasons that follow, we conclude that § 501 does contain an implied cause of action for a labor organization to sue its officers for breaches of their fiduciary duties. We reverse the decision of the district court and remand for further proceedings.

I. BACKGROUND

The plaintiff, Local 150, is a labor organization that represents approximately 22,000 employees in Illinois, Indiana, and Iowa. Defendant Joseph Ward served as the treasurer of Local 150 from the time the organization elected him to that position in 1986 until his resignation in 2007.

In its complaint, Local 150 accused Ward of purchasing a piece of real estate that Ward knew Local 150 was interested in purchasing for itself. The property in question was an empty parcel located adjacent to Local 150's District 2 offices in Joliet, Illinois. In 1994, the seller of the property contacted Local 150's president, Bill Dugan, who confirmed the Union's interest in purchasing the property. Dugan gave Ward the responsibility of monitoring the situation. Local 150 alleged that soon thereafter Ward told the seller that the Union was no longer interested in purchasing the parcel and falsely informed Dugan that the property had been sold to a

third party. In fact, however, the property was not sold until several months later, when an investment group that included Joe Ward as a member purchased it for approximately $75,000. Ward's investment group sold the same property in 2003 for $885,000, netting a handsome profit for its constituents.

In January 2007, Local 150 named Joe Ward as the sole defendant in a two-count complaint filed in the United States District Court for the Northern District of Illinois. Count I of the complaint sought damages for alleged violations of § 501 of the LMRDA, which codifies the fiduciary duties that a labor organization's officers owe to the organization and its membership. Count II alleged similar breaches of fiduciary duties under Illinois state law.

Ward filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1), which the district court granted on February 14, 2008. The district court concluded that § 501 does not contain a private cause of action for labor unions to bring claims under the LMRDA in federal court, rendering the district court without subject-matter jurisdiction to hear the dispute. The court dismissed the Union's federal claim with prejudice. In so doing, the district court, in its discretion, also refused to exercise supplemental jurisdiction over the state law claim, dismissing it without prejudice. Local 150 now appeals the district court's decision that it lacked subject-matter jurisdiction to hear the Union's federal claim.

II. ANALYSIS

We review *de novo* whether a district court properly dismissed a case for lack of subject-matter jurisdiction. *Peters v. Vill. of Clifton*, 498 F.3d 727, 729-30 (7th Cir. 2007). We begin our analysis with a brief examination of the contents and history of the LMRDA. We then discuss the limited nature of federal courts' jurisdiction and the general prerequisite to that jurisdiction of a federal cause of action. With that context, we finally turn our attention to the decisive question in this case: whether § 501 of the Act creates a private cause of action for labor organizations to sue in federal court for alleged violations of the duties it establishes. We conclude that it does.

A. The Labor-Management and Reporting Disclosure Act of 1959

In 1959, Congress passed the LMRDA, also known as the Landrum-Griffin Act, Pub. L. No. 86-257, 73 Stat. 519 (codified as amended at 29 U.S.C. § 401 *et seq.*), in response to growing concerns over corruption, violence, and racketeering within the leadership of labor organizations across the country, *see Hood v. Journeymen Barbers, Hairdressers, Cosmetologists & Proprietors Int'l Union*, 454 F.2d 1347, 1354 (7th Cir. 1972); *Phillips v. Osborne*, 403 F.2d 826, 828 (9th Cir. 1968). A year earlier, a congressional committee known as the Select Committee on Improper Activities in the Labor Management Field released a report, popularly referred to as the McClellan Committee Report, detailing these problems. *See* S. Rep. No. 85 1417 (1958); *see also Phillips*, 403 F.2d at 828. This report

served as the catalyst that prompted Congress to promulgate the LMRDA. *See Hood*, 454 F.2d at 1354 ("[Section 501] was a direct and far-reaching response to the mischief exposed and dramatized by the McClellan Committee. That mischief was the misuse of union funds and property by union officials in its every manifestation."). This case focuses on the first two subsections of § 501 of the Act.

Subsection (a) imposes many fiduciary duties on a labor organization's "officers, agents, shop stewards, and other representatives." [1] 29 U.S.C. § 501(a). [2]

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[1] Throughout this opinion, we will refer to these various organizational representatives under the collective term of "officers."

[2] The text of 29 U.S.C. § 501(a) reads as follows:

> The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

Specifically, the Act requires those individuals, all of whom "occupy positions of trust in relation to such organization and its members as a group," to hold and manage the union's money for the sole benefit of the organization, to refrain from self-dealing, and to remain loyal to the organization. *Id.* The statute makes it clear that these duties inure to the benefit of the labor organization and the people it represents as a body, not to the members as individuals. *Id.*

The duty of loyalty is at the forefront of this case. The Act states that a covered individual shall "refrain from dealing with [the] organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization." *Id.* If a union officer engages in such conduct, the Act requires him to account to the organization for any resulting profits he received. *Id.*

If an officer commits violations of the fiduciary duties set forth in subsection (a), subsection (b) creates a federal cause of action for individual union members to sue and "recover damages . . . *for the benefit of the labor organization.*" *Id.* § 501(b) (emphasis added).[3] Because these member suits serve

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[3] The relevant text of 29 U.S.C. § 501(b) reads as follows:

> When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the

to benefit the union, they are derivative, much like shareholder derivative suits brought on behalf of corporations. *See Hoffman v. Kramer*, 362 F.3d 308, 317 n.4 (5th Cir. 2004); *Chathas v. Local 134 IBEW*, 233 F.3d 508, 514 (7th Cir. 2000); *O'Hara v. Teamsters Union Local No. 856*, 151 F.3d 1152, 1161 (9th Cir. 1998). As with shareholder derivative suits, the Act permits a union member to file such a suit only if he first takes prescribed steps. *See Int'l Union of Elec., Elec., Salaried, Mach. & Furniture Workers v. Statham*, 97 F.3d 1416, 1419 (11th Cir. 1996) (comparing the prerequisites for claims brought under § 501(b) to those required for shareholder derivative suits). First, the union member must request, and the union must refuse, that the union take appropriate action to censure its own officer. *Hoffman*, 362 F.3d at 313-14; *see also* 29 U.S.C. § 501(b). Second, if the union refuses to take action, the union member must then show good cause for the suit and receive the court's permission to bring the action. *Hoffman*, 362 F.3d at 314; *see also* 29 U.S.C. § 501(b). This allows the court to assess the member's claim and ensure that the member seeks the type of remedy that would ultimately benefit the union. *See Hoffman*, 362 F.3d at 319.

The statute, therefore, openly declares that union members may sue in federal court for violations of the duties that it establishes. The Act is

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United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. . . .

silent, however, on whether it creates a similar federal cause of action for unions. As we discuss below, in this context such a cause of action is a prerequisite for a union to proceed in federal court.

B. The Cause of Action Component of Federal Question Jurisdiction

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Newell Operating Co. v. Int'l Union of United Auto., Aerospace & Agric. Implement Workers*, 532 F.3d 583, 587 (7th Cir. 2008). The circumscribed nature of the federal judiciary's jurisdiction is a function of restrictions placed upon it by both the United States Constitution and federal statutory law, both of which must authorize a federal court to hear a given type of case. *See Kokkonen*, 511 U.S. at 377; *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986).

The Constitution permits federal courts to hear only certain claims, including those claims between parties of diverse state citizenship and, most importantly for present purposes, "federal question" claims, or those "arising under" the laws of the United States. U.S. Const. art. III, § 2, cl. 1. This constitutional grant of judicial authority is broad. *See Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 495 (1983); *Osborn v. Bank of the U.S.*, 22 U.S. (9 Wheat.) 738, 823 (1824).

Despite this broad grant of authority, the Constitution gives Congress the power to further

refine the actual scope of federal jurisdiction.[4] *See* U.S. Const. art. I, § 8, cl. 9 (granting Congress the power "[t]o constitute tribunals inferior to the Supreme Court"); *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982) ("Jurisdiction of the lower federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction."). In so doing, however, Congress may not exceed its constitutional authority. *See Verlinden B.V.*, 461 U.S. at 491 ("Congress may not expand the jurisdiction of the federal courts beyond the bounds established by the Constitution."); *Marquette Cement Mfg. Co. v. FTC*, 147 F.2d 589, 593 (7th Cir. 1945) ("There are no limitations upon this congressional power [to grant jurisdiction to the federal courts] other than the Constitution."). In this way, the Constitution imposes a ceiling, albeit a high one, on the potential jurisdiction of the federal courts.

As we will discuss, Congress, by means of statutory grant, uses its constitutional authority to more narrowly restrict the federal courts' subject-matter jurisdiction. *Ins. Corp. of Ir.*, 456 U.S. at 701; *Teamsters Nat'l Auto. Transporters Indus. Negotiating Comm. v. Troha*, 328 F.3d 325, 327 (7th Cir. 2003) ("Federal courts . . . may only exercise jurisdiction where it is specifically authorized by federal statute."); Marquette Cement Mfg. Co., 147 F.2d at 593 ("The jurisdiction and authority of [the federal courts] is confined solely to that which

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[4] Only the jurisdiction of the Supreme Court of the United States is self-executing. *California v. Arizona*, 440 U.S. 59, 65 (1979) ("The original jurisdiction of the Supreme Court is conferred not by the Congress but by the Constitution itself. This jurisdiction is self-executing, and needs no legislative implementation.").

Congress bestows."). This allows Congress to exercise significant control over the types of cases federal courts may hear and is one of the many checks and balances built into the three-branch system of American government. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998).

For many years, Congress withheld from federal courts the ability to hear claims based solely on federal law. It was not until 1875, in fact, that Congress furnished federal courts with general federal question jurisdiction. Act of Mar. 3, 1875, ch. 137, 18 Stat. 470. Today, federal question jurisdiction is codified at 28 U.S.C. § 1331, which states that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Although the language of § 1331 is similar to that of Article III, courts have interpreted § 1331 much more narrowly than its constitutional counterpart. *See Verlinden B.V.*, 461 U.S. at 494-95 ("[T]his Court never has held that statutory 'arising under' jurisdiction is identical to Art. III 'arising under' jurisdiction. . . . Art. III 'arising under' jurisdiction is broader than federal-question jurisdiction under § 1331 . . . ."). What "arises under" § 1331 has been the subject of much debate among the courts. *See Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 8-9 (1983) (discussing the difficulties of interpreting "arising under"). When, however, as here, a case presents a pure federal question, i.e., a claim that alleges only direct violations of federal law, the answer, at least in theory, is fairly straightforward. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S.

308, 312 (2005) ("This ['arising under'] provision [of 28 U.S.C. § 1331] for federal-question jurisdiction is invoked by and large by plaintiffs pleading a cause of action created by federal law."). For purposes of exercising federal jurisdiction under § 1331, such a claim "arises under" federal law if the law in question creates a federal cause of action. *See Am. Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916); *Bennett v. Sw. Airlines Co.*, 484 F.3d 907, 909 (7th Cir. 2007).

Thus, when the basis of the action is a federal statute, a federal cause of action must exist as well for a federal court to hear a given claim; the general grant of federal question jurisdiction contained in § 1331, without a federal cause of action, is not enough.[5] *Nat'l R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 456 (1974). As the Supreme Court has said: "[T]he threshold question clearly is whether the [Act] . . . creates a cause of action whereby a private party . . . can enforce duties

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[5] In certain situations not before us today, a state law cause of action may also raise a federal question sufficient to permit federal court jurisdiction. *See Grable & Sons Metal Prods., Inc.*, 545 U.S. at 312 ("[I]n certain cases federal-question jurisdiction will lie over state-law claims that implicate significant federal issues."); *City of Chi. v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164 (1997) (citing *Franchise Tax Bd.*, 463 U.S. at 13); *see, e.g., Smith v. Kan. City Title & Trust Co.*, 255 U.S. 180, 199-202 (1921) (recognizing federal jurisdiction to hear a state law cause of action where "the right to relief depends upon the construction or application of the Constitution or laws of the United States"); *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 817 (1986) (recognizing, albeit narrowing, the continued validity of the *Smith* doctrine before finding no such cause of action in that case). *But see Moore v. Chesapeake & O. Ry. Co.*, 291 U.S. 205, 214-15 (1934) (declining to recognize federal jurisdiction in a situation similar to that in *Smith*).

and obligations imposed by the Act; for it is only if such a right of action exists that we need consider . . . whether the District Court had jurisdiction to entertain it." *Id.* at 456. This appeal calls for us to answer that "threshold question" in the context of § 501.

C. Federal Causes of Action Created by § 501 of the LMRDA

The question before us is whether § 501 creates a private federal cause of action for a labor organization as an entity. Although on appeal the parties couch their arguments only in terms of § 501(b), we are not limited by the parties' arguments regarding questions of jurisdiction. *See Bender*, 475 U.S. at 541; *United States v. County of Cook, Ill.*, 167 F.3d 381, 387 (7th Cir. 1999) ("[N]either the parties nor their lawyers may stipulate to jurisdiction or waive arguments that the court lacks jurisdiction."); *Hawxhurst v. Pettibone Corp.*, 40 F.3d 175, 179 (7th Cir. 1994). Indeed, we are bound to evaluate our own jurisdiction, as well as the jurisdiction of the court below, *sua sponte* if necessary. *See Bender*, 475 U.S. at 541; *Mansfield, C. & L.M. Ry. Co. v. Swan*, 111 U.S. 379, 382 (1884); *Craig v. Ontario Corp.*, 543 F.3d 872, 875 (7th Cir. 2008). If we determine that § 501 creates a federal cause of action for unions to sue, the district court will have erred in dismissing the Union's claim; just as the law requires a court to refrain from hearing a case over which it lacks jurisdiction, it also obligates a court to hear any case for which a proper jurisdictional basis does exist. *See New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 358 (1989) ("[F]ederal courts lack the authority to abstain from the exercise of

jurisdiction that has been conferred. . . . 'We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.'" (quoting *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821))).

Federal causes of action may be created either expressly or by implication. *See Transamerica Mortgage Advisors, Inc. v. Lewis (TAMA)*, 444 U.S. 11, 15 (1979). Whether express or implied, however, we remain mindful that it is Congress, not this or any other court, that creates private causes of action to enforce federal law. *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001) ("Without [statutory intent], a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute."). Thus, as we discuss in detail below, we must determine whether Congress *intended* the statute in question to create, either expressly or by implication, such a cause of action. *See id.* at 286 (calling statutory intent "determinative"); *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979) ("[O]ur task is limited solely to determining whether Congress intended to create the private right of action asserted . . . ."). The question, then, becomes one of statutory construction. *Touche Ross & Co.*, 442 U.S. at 568; *Cannon v. Univ. of Chi.*, 441 U.S. 677, 688 (1979). As with any such question, we turn as our starting point to the language of § 501 itself, *see Touche Ross & Co.*, 442 U.S. at 568, and ask whether it evinces Congress's intent to create, expressly or impliedly, a private cause of action for labor organizations to enforce its provisions.

1. Express Federal Cause of Action

Congressional intent is unmistakably evident in the case of an express cause of action. An express federal cause of action states, in so many words, that the law permits a claimant to bring a claim in federal court. Section 501(b) of the LMRDA, which expressly authorizes members of a labor union to bring a claim for violations of § 501(a) "in any district court of the United States," opens to these members the doors of the federal court system. Congress's intent is unequivocal, establishing § 501(b) as a clear example of an express federal cause of action.

A plain reading of both subsections (a) and (b) of § 501 makes it equally clear that neither provision contains an express federal cause of action for a labor organization. *See Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 374 n.16 (1990). Both circuit courts to have considered the issue have reached this same conclusion. *See Statham*, 97 F.3d at 1419; Bldg. *Material & Dump Truck Drivers, Local 420 v. Traweek*, 867 F.2d 500, 506-07 (9th Cir. 1989). The absence of an express cause of action does not end our inquiry, however. We next ask whether the statute creates an implied federal cause of action.

2. Implied Federal Cause of Action

District and circuit courts alike are divided on whether § 501 creates an implied federal cause of action for labor organizations. [6] Although the

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[6] For examples of decisions implying such a cause of action, see *Statham*, 97 F.3d at 1421; *Int'l Longshoremen's Ass'n, Steamship Clerks Local 1624 v. Va. Int'l Terminals, Inc.*, 914 F.

Supreme Court has recognized the difficulty of interpreting § 501, it has thus far declined to resolve the issue. *See Guidry*, 493 U.S. at 374 n.16 ("Courts have reached inconsistent positions on the question whether a union may bring suit under § 501. We need not resolve that question here." (citations omitted)).

Only two circuit courts, the Ninth and Eleventh Circuits, have addressed the question, and they have reached opposite conclusions. In Traweek, the Ninth Circuit, focusing exclusively on § 501(b), declined to recognize an implied federal cause of action for suits by labor unions. 867 F.2d at 506-07. The court based its conclusion on four grounds. First, the court focused on the plain language of subsection (b), stating that "[t]he clear language of the statute does not contemplate a suit brought by a union." *Id.* at 506. Second, the court claimed adherence to "the federal policy of noninterference in the internal affairs of unions and labor matters." *Id.* Third, the court believed its decision to be consistent with "the general principle . . . that the scope of federal jurisdictional statutes should be construed narrowly." *Id.* at 507. And fourth, the Ninth Circuit found evidence of Congress's intent to grant the remedy solely to the union members in § 501(b)'s requirement

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Supp. 1335, 1339 (E.D. Va. 1996); *Operative Plasterers & Cement Masons Int'l Ass'n v. Benjamin*, 776 F. Supp. 1360, 1365 (N.D. Ind. 1991); and *Glenn v. Mason*, No. 79 Civ. 3918, 1980 WL 140904, at *1-2 (S.D.N.Y. Aug. 18, 1980). Decisions reaching the opposite conclusion include, for example, *Traweek*, 867 F.2d at 507; *Local 443, Int'l Bhd. of Teamsters v. Pisano*, 753 F. Supp. 434, 436 (D. Conn. 1991); *Int'l Bhd. of Boilermakers v. Freeman*, 683 F. Supp. 1190, 1192 n.3, 1193 (N.D. Ill. 1988); and *Local 624, Int'l Union of Operating Eng'rs v. Byrd*, 659 F. Supp. 274, 276 (S.D. Miss. 1986).

that union members request leave of the court before suing. *Id.* at 506.

The Eleventh Circuit viewed the statute differently. In *Statham*, the court read subsections (a) and (b) of § 501 together and concluded that the statute as a whole created an implied federal cause of action for labor organizations. 97 F.3d at 1421. Relying on the Act's plain language and its legislative history, the court found that Congress intended labor organizations to have access to the federal courts for suits to enforce the fiduciary duties imposed by § 501(a). *See id.* at 1421 ("We conclude that *section 501(a)* was intended to create a federal cause of action that can be asserted by the union on its own behalf." (emphasis added)).

In looking to the duty-creating language of § 501(a), the Eleventh Circuit said that "[i]t would make no sense to impose federal duties and simultaneously deny the unions the right to enforce those duties." *Id.* at 1420. The court hypothesized that "[i]f Congress had only enacted section 501(a) without section 501(b), no one would suggest that Congress meant to deny the union the right to enforce 501(a)." *Id.* The court saw no reason that subsection (b)'s mere existence should detract from what it viewed as the obvious import of subsection (a). *See id.* at 1421 ("We should not infer from the mention of individual suits that Congress did not intend to give unions a cause of action.").

Instead, the Eleventh Circuit read subsection (b) as a complement to subsection (a). Subsection (b), the court noted, had two purposes. The first was to enable individual union members to sue on the

union's behalf. *Id.* The second was "to make sure that individuals do not preempt a union's right to prosecute its own claims." *Id.* Despite these dual purposes, the court noted that § 501(b) itself, which requires that unions have the first opportunity to sue for violations of the duties set forth in subsection (a), "makes the first purpose subservient to the second." *Id.*; *see also id.* at 1419 ("[S]ection 501(b) shows Congress preferred that the union, rather than individual members, sue on its own behalf."). The Eleventh Circuit summarized the interplay between subsections (a) and (b) as follows: "It is far more in keeping with the statute as a whole to conclude that, having given the unions certain rights, Congress thought it implicit that the unions could enforce those rights in court. Allowing the individuals to assert the unions' claims was more extraordinary and therefore had to be spelled out." *Id.* at 1421.

The Eleventh Circuit also looked to the LMRDA's legislative history for evidence of Congress's intent. The court noted that the Act was a broad and wide ranging attempt to reign in corruption within union leadership. *Id.* at 1420-21 (citing *Hood*, 454 F.2d at 1354). When Congress passed the LMRDA, few states had imposed fiduciary duties upon union officials, and members of Congress perceived the remedies available for breaches of those duties to be inadequate. *Id.* at 1420 (citing S. Rep. No. 86-187 (1959), *reprinted in* 1959 U.S.C.C.A.N. 2318, 2376). The court concluded from this historical background that "Congress intended to supplement the remedies available to unions by creating new federal protections." *Id.* Because § 501 was intended to compensate for inadequate state remedies, the court

held that it would "frustrate congressional intent to relegate the union to state remedies." *Id.*

It is incumbent on this court, it appears, to break the tie between the Ninth and Eleventh Circuits on this issue. We begin with the Supreme Court's current views on implied private federal causes of action. The Court's guidance on when a court should recognize an implied cause of action has evolved over time. Originally, the Court would find an implicit cause of action if doing so would effectuate a statute's purpose and there was nothing in its legislative history to counter the implication. *See J.I. Case Co. v. Borak*, 377 U.S. 426, 431-35 (1964). The Court later adopted a series of questions to help courts decide whether to imply a federal cause of action. *See Cort v. Ash*, 422 U.S. 66, 78 (1975). The four factors the Court considered were (1) whether the statute created a federal right in favor of the plaintiff; (2) whether there existed explicit or implicit evidence of congressional intent either to create or deny a cause of action; (3) whether implying a cause of action was consistent with the underlying purpose of the legislative scheme; and (4) whether the cause of action was one traditionally relegated to the states. *Id.*

Most recently, however, the Court has distanced itself from the approaches discussed in both *Borak* and *Cort*. *See Alexander*, 532 U.S. at 287; TAMA, 444 U.S. at 15-16; *see also Thompson v. Thompson*, 484 U.S. 174, 189 (1988) (Scalia, J., concurring in the judgment) (calling *Cort* "effectively overruled"). Instead, as we have noted, the Court has now focused solely on the question of congressional intent. See *Alexander*, 532 U.S. at 286-87; *Karahalios v. Nat'l*

Fed'n of Fed. Employees, Local 1263, 489 U.S. 527, 532-33 (1989) (looking at congressional intent as the sole factor in its implied-cause-of-action analysis); *TAMA*, 444 U.S. at 15-16; *Touche Ross & Co.*, 442 U.S. at 568; *see also Thompson*, 484 U.S. at 189 (Scalia, J., concurring in the judgment) (referring to congressional intent as "the determinative factor" in evaluating the existence of a private cause of action).

In *Alexander*, 532 U.S. 275, the Court, while interpreting a section of Title VI of the Civil Rights Act, attempted to bring some clarity to the implied cause of action analysis. Justice Scalia, writing for the Court, said: "The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy." *Id.* at 286. The inquiry into congressional intent, therefore, is two-fold: Congress must have intended to create both a private right and a private remedy. *Id.* Such is the inquiry that we now must undertake in the context of § 501.

We begin with the text of the statute. *Touche Ross & Co.*, 442 U.S. at 568. As required by *Alexander*, we look specifically for "rights-creating language" and an enforcement regime suggesting the existence of a private remedy for labor organizations. 532 U.S. at 288-89. Subsection (a) provides that union officers, agents, and other representatives "occupy positions of trust in relation to *such organization and its members as a group*." 29 U.S.C. § 501(a) (emphasis added). This language establishes union officers as fiduciaries vis-à-vis the union and its members. Had the statute stopped there, one might argue that the text suggests an intent to leave the scope of the fiduciary relationship to state

common law and remit unions to standard state-law fiduciary remedies.

But § 501(a) goes further. It articulates a series of specific fiduciary duties. Union officers must hold the union's money and property "solely for the benefit of the organization and its members." *Id.* They must "refrain from dealing with such organization as an adverse party or in behalf of an adverse party." *Id.* They must not "hold[] or acquir[e] any pecuniary or personal interest which conflicts with the interests of such organization." *Id.* And they must "account to the organization for any profit received by him . . . in connection with transactions conducted by him or under his direction on behalf of the organization." *Id.* Finally, the last sentence of § 501(a) provides that "[a] general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy." *Id.*

This language does not simply stipulate that general state-law fiduciary principles apply. Instead, it prescribes in some detail the scope of the fiduciary relationship between union officers and the union. The statutory text imposes a series of explicit, affirmative fiduciary obligations and requires an accounting "to the organization" for profits received by union officers in the course of the union's operations. The itemized list includes some traditional duties of a fiduciary, but the fact that they are specifically enumerated suggests the imposition of new *federal* duties plainly inuring to the benefit of the union and its members. That much is clear from

the statutory text (union officers "occupy positions of trust *in relation to such organization and its members as a group*," hold money and property "solely *for the benefit of the organization and its members*," and must "account *to the organization* for any profit"). *Id.* (emphases added). But it also flows from the nature of a fiduciary duty. A statute that imposes fiduciary *duties* necessarily implies corresponding *rights* in the beneficiaries. The statute's focus is thus not solely on the persons being regulated but also on those whose interests are protected—here, the union and, by extension, its members. *Cf. Alexander*, 532 U.S. at 289 ("Statutes that focus on the person regulated rather than the individuals protected create no implication of an intent to confer rights on a particular class of persons." (quotations omitted)).

Thus, an implication arises that § 501(a) confers federal rights on labor organizations: the right to the faithful performance by union officers of the general and specific fiduciary obligations enumerated in the text; the right to an accounting; and the right to nullify any exculpatory clause asserted by union officers as a defense to an action for liability for breach of the fiduciary duties imposed by § 501(a). In other words, the statutory language as a whole manifests an intent "to create new rights" for labor unions. *See Alexander*, 532 U.S. at 289.

The statutory language implies the creation of a federal remedy for the union as well. The statutory duty to "account to the organization for any profit received" fairly implies that the union has a specific remedy—that it may sue an unfaithful officer in federal court for an accounting for ill-gotten gains.

The last sentence in § 501(a) also suggests the existence of a federal enforcement regime that includes a remedy for the union. It voids any exculpatory provision in the union's organizational documents or resolutions that "purport[s] to relieve any [union officer] of liability for breach of the duties" declared in the statute. 29 U.S.C. § 501(a). The only possible role such an exculpatory clause could serve is as a defense to a claim against a union officer for breach of the duties imposed by § 501(a), and any such claim belongs *at least* to the union.[7] By nullifying any exculpatory provisions, the statute removes a possible *defense* to liability. It follows that the union must have a statutory remedy for liability for breach against which this sort of defense might potentially be asserted.

The derivative action created in subsection (b) for individual union members reinforces rather than undermines the implication arising from the text of subsection (a).[8] Section 501(b), by its terms, does nothing more than grant union members the right to sue on a union's behalf. It was necessary for Congress to make this derivative cause of action explicit because there is nothing in subsection (a) to suggest that union members themselves could sue for fiduciary violations committed against the union. *See Statham*, 97 F.3d at 1421 ("Allowing the individuals to assert the unions' claims was more extraordinary

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[7] We defer momentarily the question of the remedies available to individual union members, which the statute addresses in subsection (b).

[8] The Ninth Circuit in *Traweek* held that § 501(b)'s express cause of action for individual union members foreclosed any implied cause of action for the union itself. *See* 867 F.2d at 506-07. We disagree, for the reasons we explain.

and therefore had to be spelled out."). In creating this express cause of action for union members, however, § 501(b) neither opens nor closes the federal courthouse to the unions themselves. Instead, it provides further evidence that labor organizations have an implied cause of action under subsection (a).

Subsection (b) conditions union members' right to sue on the union's refusal or failure to bring suit itself. *See* 29 U.S.C. § 501(b). Only after union members have requested that the union seek relief for violations of § 501(a), and the union has failed or refused to take such action, may the union member sue. *Id.* The union member's suit may "recover damages or secure an accounting or other appropriate relief *for the benefit of the labor organization*." *Id.* (emphasis added). By structuring the union member's right and remedy in this way, Congress has created a derivative system much like shareholder derivative actions seen in corporate law. *See Hoffman*, 362 F.3d at 317 n.4; *Chathas*, 233 F.3d at 514; *see also* Fed. R. Civ. P. 23.1.

We pause here to note that in reordering the analysis in private-cause-of-action cases, *Alexander* subordinated context to text, but it did not eliminate consideration of legal context entirely, particularly when used to clarify text. *See Alexander*, 532 U.S. at 288 ("We have never accorded dispositive weight to context shorn of text. In determining whether statutes create private rights of action, as in interpreting statutes generally, legal context matters only to the extent it clarifies text." (citation omitted)). Here, there are important parallels between union member derivative actions under § 501(b) and shareholder derivative suits; to the extent that the

text of § 501 requires clarification, we find it in this legal context.

At common law and under modern state corporation law statutes, the derivative action remedy allows shareholders to bring a corporation's claim on the corporation's behalf when the corporation fails or refuses to act. *See Ross v. Bernhard*, 396 U.S. 531, 534 (1970). In Ross, the Supreme Court discussed the history of shareholder derivative actions. The Court noted that courts in equity developed the derivative suit to provide shareholders redress "against faithless officers and directors [and] also against third parties who had damaged or threatened the corporate properties." *Id.* The American legal system, said the Court, viewed a shareholder derivative action "as a suit to enforce *a corporate cause of action* against officers, directors, and third parties." *Id.* (emphasis added); *see also Koster v. Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 522 (1947) ("The cause of action which such a [derivative] plaintiff brings before the court is not his own but the corporation's."). The Court went on to say that "one precondition for the [shareholder] suit was a valid claim *on which the corporation could have sued*." *Ross*, 396 U.S. at 534 (emphasis added).

The same principles are at work in the federal derivative remedy created for union members in § 501(b). The statutory rights conferred by subsection (a) belong to the union; individual union members are derivative beneficiaries, and under subsection (b) they may sue in federal court on the union's behalf to vindicate those rights, but only if the union itself first fails or refuses to do so. It would be anomalous indeed to read this statutory scheme as remitting the union's

own suit—which is primary under the statutory hierarchy—to state court. *See TAMA*, 444 U.S. at 19 & n.8 (interpreting 15 U.S.C. § 80b-15 as implying a limited private cause of action for violation of the Investment Advisers Act and noting that Congress could have intended that claims under § 215 would be brought only in state court, but declining "to adopt such an anomalous construction without some indication that Congress in fact wished to remit the litigation of a federal right to state court"); *see also Statham*, 97 F.3d at 1420. A district court in this circuit has also recognized this irregularity: "To allow union members to sue in federal court while foreclosing suit by unions would create perverse incentives whereby unions would 'refuse' to bring suit upon an appropriate demand by one of its members for the sole purpose of manufacturing federal jurisdiction." *Benjamin*, 776 F. Supp. at 1366.

As our discussion makes clear, we agree with the Eleventh Circuit that the text and remedial structure of § 501(a) and (b), read together, imply both federal rights and a federal remedy for labor organizations against union officers who violate their statutory duties.[9] Today's conclusion does not extend our jurisdiction beyond that contemplated by Congress, as some courts have suggested. *See, e.g.*, *Traweek*, 867 F.2d at 506-07; *Freeman*, 683 F. Supp. at 1192. We may not, nor have we any desire to, enlarge our own jurisdiction. Instead, today's decision arises by clear implication from the text, structure, and context of § 501.

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[9] We part company, however, with the Eleventh Circuit's use in *Statham* of the LMRDA's legislative history. *See* 97 F.3d at 1420.

Nor do we believe, as the Ninth Circuit has stated, that this conclusion represents an unwarranted interference in the internal affairs of labor organizations. *See Traweek*, 867 F.2d at 506; *Phillips*, 403 F.2d at 830. Congress has weighed the risks and benefits of a federal judicial remedy for the misconduct of union officers; we are bound to give effect to the LMRDA as written, with the interpretive guidance we have drawn from the Supreme Court's recent implied-cause-of-action jurisprudence.

In summary, we hold that labor organizations have an implied cause of action under § 501(a) to sue in federal court for violation of the fiduciary duties imposed by the statute. The text and structure of the statute as a whole demonstrate Congress's intent to confer upon unions federal rights and a federal remedy. Because Local 150 has a federal cause of action for violation of § 501, the district court possessed jurisdiction to hear this case pursuant to the general grant of federal-question jurisdiction, 28 U.S.C. § 1331, and therefore erred in dismissing the suit.

III. CONCLUSION

For the reasons above, we conclude that the district court incorrectly dismissed the case for lack of subject-matter jurisdiction. We REVERSE the decision of the district court and REMAND the case for further proceedings.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

INTERNATIONAL UNION OF OPERATING ENGINEERS) LOCAL 150, AFL-CIO	)	No. 07 C 0142
Plaintiff,	)	Judge Ruben Castillo
JOSEPH P. WARD, INDIVIDUALLYAND AS AN OFFICER OF LOCAL 150	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff, International Union of Operating Engineers, Local 150, AFL-CIO ("Local 150"), brought this action against Defendant, Joseph P. Ward ("Ward"), alleging violations of Section 501 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 501(a), (b) ("LMRDA") and a state law breach of fiduciary duty claim. (R. 1, Compl.) Local 150 alleges that this Court has subject matter jurisdiction over the LMRDA matter pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over the state law fiduciary duty claim pursuant to 28 U.S.C. § 1367. (*Id.*) Ward filed a motion to dismiss for lack of subject matter jurisdiction, or in the alternative, a motion for summary judgment. (R. 33, Ward Mot. to Dismiss.)

I. Background

Local 150 is a labor organization representing approximately 22,000 employees, with its principal office in Countryside, Illinois. (R. 15, Answer ¶ 4.) Ward is the elected Treasurer of Local 150 and has served in that position since 1986. (*Id.* ¶ 7.) In its complaint, Local 150 alleges that Ward breached his fiduciary duty to the union and its members by purchasing a piece of land in 1994 that Ward knew Local 150 was interested in purchasing for itself. (R. 1, Compl. ¶¶ 9-14.) Ward and his partners developed the property and sold the property for a profit in 2003. (*Id.* ¶¶ 16-18.)

II. Legal Standard

Federal Rule of Civil Procedure 12(b)(1) requires the court to dismiss a matter over which it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). On a motion for "dismissal for lack of subject matter jurisdiction,... a district court must accept as true all well-pleaded factual allegations and draw all reasonable inferences in favor of the plaintiff." *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616, 625 (7th Cir. 2007). In considering such a motion, "the district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists." *Id.* (internal citations omitted).

III. LMDRA Claim

In his motion, Ward argues that this Court lacks subject matter jurisdiction over Local 150's LMRDA claim because Section 501 of the LMRDA does not

provide a private right of action for unions.[1] (R. 33, Ward Mot. at 3.) A private federal right of action is necessary to maintain federal jurisdiction here, where no constitutional or substantial federal issue outside the LMRDA is present in Local 150's complaint. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). To determine whether subject matter jurisdiction exists, the Court looks first to Local 150's complaint because "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Wisconsin v. Ho-Chunk Nation*, 463 F.3d 655, 659 (7th Cir. 2006) (internal citations omitted). Local 150 claims that subject matter jurisdiction exists because the case arises under federal law, 28 U.S.C. § 1331. (R. 1, Compl. ¶ 2.) "To arise under federal law, the law must create the cause of action." *Ho-Chunk*, 463 F.3d at 659 (internal citations and quotations omitted). Local 150's complaint lists the LMRDA as a basis for jurisdiction in federal court.

Section 501(a) of the LMRDA lists the fiduciary duties that representatives of a labor organization owe to the organization and its members, including:

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[1] Local 150 argues that this Court previously rejected Ward's subject matter jurisdiction argument when we denied Ward's prior motion to dismiss. (R. 38, Local 150 Resp. at 11.) This Court's denial of the prior motion to dismiss (R. 9), however, did not reference subject matter jurisdiction. (R. *12/3/6/07* Min. Order.) Regardless, "limits on subject-matter jurisdiction are not waivable or forfeitable ... federal courts are required to police their jurisdiction." *Smoot v. Mazda Motors of Am., Inc.*, 469 F.3d 675, 678 (7th Cir. 2006).

> to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. . . .

29 U.S.C. § 501(a). In the event that the duties stated in Section 501(a) are violated, Section 501(b) provides for the following remedy:

> [if] the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization.

29 U.S.C. § 501(b).

Federal courts are divided on the issue of whether Section 501 gives a union, as opposed to a union member, a private right of action. *See Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 375 n.16 (1990) (acknowledging that "[c]ourts have reached inconsistent positions on the question whether a union may bring suit under § 501"). In *Guidry*, the Supreme Court opined that Section 501, "by its terms, does not establish a private right of action for a union itself." *Id.* While the language of the statute "certainly contemplates that a union may bring suit against its officers in some forum . . . it does not expressly provide an independent basis for federal jurisdiction." *Id.* The Supreme Court declined to resolve the issue.[2] *Id.*

The Seventh Circuit has not yet weighed in on this issue.[3] This Court finds persuasive the analysis

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[2] After explicitly declining to resolve the question of whether Section 501 provides a private right of action for a union, the *Guidry* Court added that "we assume, without deciding, that a union may invoke the remedial provisions of § 501(b)." *Id.* Contrary to Local 150's argument, the Court's assumption does not support the existence of a private cause of action for unions under Section 501.

[3] In *Tile, Marble, Terrazzo, Finishers, Shopworkers and Granite Cutters Int'l Union, AFL-CIO v. Ceramic Tile Finishers Union, Local 25*, 972 F.2d 738, 742 (7th Cir. 1992), federal jurisdiction existed under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a). There, the Seventh Circuit found that the policies underlying Section 501 of LMRDA were not at stake in a matter involving an international union's suit to enforce its trusteeship over a local union. *Id.* at 745. In dicta, the Court added that "it unnecessary to decide whether a union could sue under section 501 without meeting the procedural prerequisites of the statute." *Id.* at 745 n.4. This footnote leaves open the question of whether there are any circumstances in which a union could sue under Section 501.

of courts holding that the plain language of Section 501 does not support a private right of action for unions. *See, e.g., Int'l Union, Security, Police and Fire Prof'ls of Am. v. United Gov't Sec. Officers of Am. Int'l Union*, No. 04 C 2242, 2004 WL 3019430, at *4 (D. Kan. Dec. 30, 2004); *Local* 15 *of Int'l Bhd. of Elec. Workers v. O'Reilly*, No. 02 C 6464, 2003 WL 29896, at *3 (N.D. Ill. Jan. 2, 2003); *Local 1150 Int'l Bhd. of Teamsters v. Santa Maria*, 162 F. Supp. 2d 68, 80-81 (D. Conn. 2001); *United Transp. Union v. Bottalico*, 120 F. Supp. 2d 407, 408-09 (S.D.N.Y. 2000); *Int'l Bhd. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers. AFL-CIO, v. Freeman*, 683 F. Supp. 1190, 1192 (N.D. Ill. 1988). The plain language of Section 501(b) provides that "such member may sue . . . in any district court of the United States or in any State court of competent jurisdiction . . ." 29 U.S.C. § 501(b). Section 402(o) of the LMRDA defines the term "member" to include *"any person* who has fulfilled the requirements for membership in such organization...." 29 U.S.C. § 402(o) (emphasis added). In the absence of any explicit authorization from Congress, this Court may not enlarge its jurisdiction by permitting the union to sue in federal court. It is an "elemental canon of statutory construction that where a statute expressly provides a remedy, courts must be especially reluctant to provide additional remedies." *Karahalios v. Nat'l Fed'n of Fed. Employees, Local 1263*, 489 U.S. 527, 533 (1989) (internal quotations omitted). In such cases, "in the absence of strong indicia of contrary congressional intent, we are compelled to conclude that Congress provided precisely the remedies it considered appropriate." *Id.* "The express provision of one method of enforcing a

substantive rule suggests that Congress intended to preclude others. Sometimes the suggestion is so strong that it precludes a finding of congressional intent to create a private right of action, even though other aspects of the statute ... suggest the contrary." *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001) (internal citations omitted). If Congress had wanted to give the union the same right of action that it explicitly provided to union members—defined as "persons" under the statute—it could have done so.

Furthermore, Congress could conceivably have intended to relegate unions to sue in state court due to the federal policy of noninterference in internal union affairs. *See Fulk v. United Transp. Union*, 160 F.3d 405, 408 (7th Cir. 1998) (explaining federal policy of noninterference in internal union affairs). In fact, the Ninth Circuit construed Section 501 of the LMRDA as not creating a right of action for unions "[b]ecause of the federal policy of noninterference in the internal affairs of unions and labor matters." *Bldg. Material & Dump Truck Drivers Local 420 v. Traweek*, 867 F.2d 500, 506 (9th Cir. 1989); *see also Dunlop-McCullen v. Pascarella*, No. 97 C 195, 2002 WL 31521012, at *9 (S.D.N.Y. Nov. 13, 2002) (holding that Section 501 did not create private right of action for unions in part because adequate recourse for unions was available under state law). Although Section 501(b) limits union members' right to sue until after the union fails to sue for breach of the fiduciary duties listed in Section 501(a), we do not read this as providing a private right of action to unions under Section 501(b). Unions still have the right to sue in state court for breach of fiduciary duty by its officers or other representatives. *But see Int'l Union of Elec., Elec. Salaried, Mach. & Furniture*

Workers, AFL-CIO v. Statham, 97 F.3d 1416, 1421 (11th Cir. 1996) (holding that Section 501(b)'s provision that unions have first opportunity to sue shows that Congress did not mean to exclude possibility of federal jurisdiction over claims by unions under this section).

Nevertheless, some courts have looked beyond the plain language of Section 501(b)—expressly conferring jurisdiction only on union members—to find an implied right of action for unions in Section 501(a)'s recitation of the fiduciary duties of the "officers, agents, shop stewards, and other representatives of a labor organization."[4] *See, e.g., Int'l Longshoremen's Ass'n, S.S. Clerks Local 1624, AFL-CIO v. Virginia Int'l Terminals, Inc.*, 914 F. Supp. 1335, 1339 (E.D. Va. 1996); *Teamsters, Chauffeurs, Warehousemen & Helpers, Local 764 v. Greenawalt*, 880 F. Supp. 1076, 1080-81 (M.D. Pa. 1995); *Operative Plasterers & Cement Masons Intern. Ass'n of U.S. and Canada, AFL-CIO v. Benjamin*, 776 F. Supp. 1360, 1365 (N.D. Ind. 1991). The Supreme Court set out a four-part test to

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[4] Some of these cases distinguish between 28 U.S.C. § 1337, which vests jurisdiction in the federal courts for "any civil action or proceeding arising under any Act of Congress regulating commerce," and 28 U.S.C. § 1331, which gives federal courts jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." The Supreme Court does not distinguish between the arising under standards of § 1337 and § 1331. *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, *8 n.7 (1983). Neither jurisdictional statute saves Local 150's LMRDA claim because, as explained above, "[t]o arise under federal law, the law must create the cause of action." *Ho-Chunk*, 463 F.3d at 659, and Section 501 of the LMRDA does not create a private right of action for unions.

determine whether courts can imply a private right of action from a statute: "(1) whether the plaintiff is a member of the class for whose benefit the statute was enacted; (2) whether there is any indication of legislative intent to create or deny such a remedy; (3) whether an implied remedy is consistent with the underlying purposes of the statutory scheme; and (4) whether the cause of action is one traditionally relegated to the states so that it would be inappropriate to infer a federal remedy." *Edelson v. Ch'ien*, 405 F.3d 620, 630 (7th Cir. 2005) (setting forth four-part test in *Cort v. Ash*, 422 U.S. 66 (1975)). The Supreme Court focuses primarily on legislative intent, which asks "whether Congress intended an implied right of action ... in light of the statute's language, structure, and legislative history." *Id.* at 630-31 (internal citations omitted). If these inferences of intent are absent, "the essential predicate for implication of a private remedy does not exist." *Id.* at 631. As explained above, Section 150's language—providing an express remedy to union *members*—"weighs heavily against finding legislative intent to give a cause of action" to unions. *See Santa Maria*, 162 F. Supp. 2d at 80-81. In addition, neither the statute's structure or legislative history support finding an implied right of action for unions. *See Int'l Longshoremens Ass 'n, AFL-CIO v. Spear, Wilderman, Borish, Endy, Spear & Runckel*, 995 F. Supp. 564, 573 (E.D. Pa. 1998) (holding that cause of action for a union under Section 501 may not be implied from the statute or its purpose); *Dunlop-McCullen*, 2002 WL 31521012, at *9 (holding that Section 501 did not create cause of action for unions because in enacting the LMRDA, Congress was more

concerned with enabling suits by union members than by unions).

Accordingly, the Court finds neither an express nor implied right of action for unions in Section 501. Because Section 501 of the LMRDA does not provide a private right of action for unions, this Court must dismiss Local 150's LMRDA claim for lack of subject matter jurisdiction.[5]

IV. Breach of Fiduciary Duty Claim

The only claim remaining in Local 150's two-count complaint is a claim for breach of fiduciary duty, over which Local 150 asserts this Court has jurisdiction pursuant to 28 U.S.C. § 1367. (R. 1, Compl. ¶ 2.) Pursuant to 28 U.S.C. § 1367(a), when the Court has original jurisdiction over a federal claim, the Court also has supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a). When the claim over which the court has original jurisdiction is dismissed, however, the court may decline to exercise supplemental jurisdiction over the remaining state claims. 28 U.S.C. § 1367(c)(3).

When a state-law claim is appended to a federal claim that confers original jurisdiction on the federal courts, as in this case, "the sensible presumption [is] that if the federal claims drop out before trial the district court should relinquish jurisdiction over the

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[5] As the lack of subject matter jurisdiction is determinative of Local 150's LMRDA claim, this Court declines to address Ward's remaining arguments to dismiss the LMRDA claim.

state-law claims." *Williams Elec. Games, Inc. v. Garrity*, 479 F.3d 904, 907 (7th Cir. 2007) (internal citations omitted). This presumption is based on the fact that "[s]ubstantial judicial and party resources will probably not have been expended on the litigation, and so the economies from retaining jurisdiction over the state-law claims will be slight." *Id.; see also Redwood v. Dobson*, 476 F.3d 462, 467 (7th Cir. 2007) ("A court that resolves all federal claims before trial normally should dismiss supplemental claims without prejudice."). The considerations supporting the presumption against retaining supplemental jurisdiction apply here. Because the Court has dismissed Local 150's only federal claim for lack of subject matter jurisdiction, we decline to exercise supplemental jurisdiction over the remaining state law fiduciary duty claim. *See* 28 U.S.C. § 1367(c)(3).

CONCLUSION

For the reasons explained above, Ward's motion to dismiss Local 150's complaint is granted. (R. 33, Mot. to Dismiss.) Local 150's LMRDA claim is dismissed with prejudice, and Local 150's breach of fiduciary duty claim is dismissed without prejudice to its renewal in state court.

Entered: **/s/**
Judge Ruben Castillo
United States District Court

Dated: February 14, 2008

139

(2)

No. 09-196

SUPREME COURT, U.S.
FILED
SEP 4 - 2009

IN THE
Supreme Court of the United States

JOSEPH P. WARD,

Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT 1

ARGUMENT 2

CONCLUSION 10

knew the Local was interested in purchasing and later selling that property at a large personal profit. Pet. App. 2a-3a. The District Court (Castillo, D.J.) dismissed Local 150's complaint on the ground that "Section 501 does not support a private cause of action for unions." Pet. App. 32a. The Seventh Circuit (Kanne, C.J., joined by Williams and Sykes, C.J.) reversed, concluding that "§ 501 of the Act [does] create[] a private cause of action for labor organizations to sue in federal court for alleged violations of the duties it establishes." Pet. App. 4a.

ARGUMENT

The question presented by the petition for certiorari is whether § 501 of the Labor Management Reporting and Disclosure Act of 1959 – one of the "Safeguards for Labor Organizations" set forth in Title V of the Act, 29 U.S.C. Subchapter VI – creates a cause of action for a labor organization to bring suit in its own name seeking recovery for the "liability for breach of the duties declared by th[at] section." 29 U.S.C. § 501(a).

The Seventh Circuit below, "agree[ing] with the Eleventh Circuit," concluded that "the text and remedial structure of § 501(a) and (b), read together," do create "a federal remedy for labor organizations against union officers who violate their statutory duties." Pet. App. 25a, citing *Int'l Union of Elec., Elec., Salaried, Mach. & Furniture Workers v. Statham*, 97 F.3d 1416, 1420-21 (11th Cir. 1996).

The conclusion reached by the Seventh and Eleventh Circuits that § 501 does create a federal labor organization cause of action follows directly from the statutory text. Section 501(a) declares that "[t]he officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a

group." 29 U.S.C. § 501(a). Section 501(a) goes on to define in detail "the duty of each such person, taking into account the special problems and functions of a labor organization" and to provide that the labor organization may not "relieve any such person of liability for breach of the duties declared by this section." *Ibid.* Moreover, § 501(b) adds that where a "labor organization or its governing board or officers refuse or fail to sue" an officer who "is alleged to have violated the duties declared in subsection (a)," a "member may sue such officer . . . to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization." 29 U.S.C. § 501(b).

A. The certiorari petition's principal claim is that the Seventh Circuit decision below and the Eleventh Circuit *Statham* decision are "in direct conflict with the Ninth Circuit [decision in] *Bldg. Material and Dump Truck Drivers, Local 420 v. Traweek*, 867 F.2d 500, 506-507 (1989)" and that this Court's review is necessary to resolve that conflict. Pet. 10. That claim does not bear scrutiny.

A district court within the Ninth Circuit very recently concluded that it was free to "adopt[] the reasoning of the Seventh Circuit and Eleventh Circuit in holding that Section 501(a) implies a federal right of action in favor of labor unions to enforce the duties established therein." *Service Employees Int'l Union v. Roselli*, 2009 WL 1382259, p. *2 (N.D. Cal. May 14, 2009). That court explained why, contrary to the Petitioner, the Ninth Circuit's *Traweek* decision is *not* "in direct conflict with" the Seventh and Eleventh Circuit decisions so as to preclude adoption of their reading of § 501 as providing for a labor organization cause of action:

> "In holding that Section 501(b) is limited to suits by union members and that unions them-

selves cannot sue under Section 501(b), *Building Materials and Dump Truck Drivers, Local 420 v. Traweek*, 867 F.2d 500, 506-507 (9th Cir. 1989), did not consider whether Section 501(a) implies a right of action by unions. The actual holding of *Traweek* expressly pertained only to Section 501(b) and *not* to Section 501(a). *Id.* at 507 (col. one)." *Ibid.* (emphasis in original).

It is all but certain, then, that in either the *Service Employees* case, which is still pending in the district court, or in some similar case, the Ninth Circuit will have an opportunity to consider whether § 501(a) & (b) taken as a whole – as opposed to § 501(b) standing alone – provide labor organizations with a cause of action to remedy breaches of the duties declared in § 501(a). When the Ninth Circuit does revisit this issue, with the benefit of the thorough analysis of the text of § 501 considered as a whole contained in the more recent Seventh Circuit decision below and Eleventh Circuit *Statham* decision, it is equally certain that the Ninth Circuit will reach the same conclusion as those circuits.

Against that background, the asserted conflict between the recent decisions of the Seventh and Eleventh Circuit and the earlier decision of the Ninth Circuit is not one that calls for this Court's intervention at this time.[1]

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[1] The division among the district courts cited by the petition, Pet. 12-13, is of no moment. The district court decisions are not binding precedents, even in the districts in which they were issued. To the extent that the district courts outside the Seventh and Eleventh Circuits continue to find that LMRDA § 501 does not create a cause of action for unions, that occurrence will merely provide the other circuits an opportunity to rule on this issue.

B. The text of LMRDA § 501 manifests Congress's intent to create a cause of action for labor organizations to bring suit against union officers seeking recovery for the "liability for breach of the duties declared by th[at] section." 29 U.S.C. § 501(a). Indeed, the statutory text cannot support any other reading.

(i) Section 501(a) begins by stating generally that "[t]he officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group." 29 U.S.C. § 501(a). The Section then goes on to enumerate "the dut[ies] of each such person, taking into account the special problems and functions of a labor organization" as follows:

> "to hold its money and property solely *for the benefit of the organization and its members* and to manage, invest, and expend the same *in accordance with its constitution and bylaws and any resolutions of the governing bodies* adopted thereunder,
>
> "to refrain from *dealing with such organization* as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest *which conflicts with the interests of such organization*, and
>
> "*to account to the organization* for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction *on behalf of the organization*." *Ibid.* (emphasis added).

And, the Section concludes by providing that "[any] general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of *liability for breach of the*

duties declared by this section shall be void as against public policy." *Ibid.* (emphasis added).

The text of § 501(a) sets out the requisites for a federal breach of duty cause of action on behalf of labor organizations. That provision "declare[s]" a set of duties that a labor organization's officers owe "to such organization and its members as a group." And, that provision – in its non-exculpation clause – takes pains to assure that transgressing union officers are subject to legal "liability for breach of the duties declared by th[at] section." What is more, the provision is contained in Title V of the Act, which provides "Safeguards for Labor Organizations." 29 U.S.C. Subchapter VI. Thus, as the Eleventh Circuit aptly observed, "If Congress had only enacted section 501(a) without section 501(b), no one would suggest that Congress meant to deny the union the right to enforce 501(a)." *Statham*, 97 F.3d at 1420. *See* Pet. App. 19a-21a (analyzing the language of Section 501(a)).

(ii) Against all of the foregoing, the petition says barely a word about the text of § 501(a). *See* Pet. 4. Instead, the petition would infer that § 501 does not create a labor organization cause of action from the fact that § 501(b) creates a limited cause of action allowing union members – where "the labor organization . . . refuse[s] or fail[s] to sue" on its own behalf to "sue [an] officer" who is "alleged to have violated the duties declared in subsection (a)" in order "to recover damages or secure an accounting . . . for the benefit of the labor organization." 29 U.S.C. § 501(b). *See* Pet. 15-18.

Section 501(b) creates no such negative inference. As the Seventh Circuit noted, "[t]he derivative action created in subsection (b) for individual union members reinforces rather than undermines the implica-

tion [that § 501 creates a labor organization cause of action] arising from the text of subsection (a)." Pet. App. 22a.

To begin with, § 501(b) provides that a union member may sue an officer for "violat[ing] the duties declared in subsection (a)" *only* if "the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization." 29 U.S.C. § 501(b). In other words, the precondition to a union member § 501(b) lawsuit is that the "union members have requested that the union seek relief for violations of § 501(a), and the union has failed or refused to take such action." Pet. App. 23a. That requirement can only be read as embodying the premise that § 501(a) has already provided the labor organization with the means "to sue" for violations of the duties declared there to "recover damages or . . . other appropriate relief." For it cannot be that Congress would impose a requirement on union members to request the labor organization to sue a union officer for breach of the § 501(a) duties when Congress has not empowered the organization to bring such a suit.

Beyond that, § 501(b) provides that "[t]he union member's suit may 'recover damages or secure an accounting or other appropriate relief *for the benefit of the labor organization*.'" Pet. App. 23a quoting with emphasis 29 U.S.C. § 501(a). Thus, in § 501(b), "Congress has created a derivative system much like shareholder derivative actions seen in corporate law." *Ibid.* A shareholder derivative action is "a suit to enforce *a corporate cause of action* against officers, directors, and third parties," i.e., a suit to enforce "a valid claim *on which the corporation could have*

sued." Pet. App. 24a quoting with emphasis *Ross v. Bernhard*, 396 U.S. 531, 534 (1970). It follows that the union member derivative suit created by § 501(b) asserts "a [labor organization] cause of action" "on which the [labor organization] could have sued." And, in this context, that labor organization cause of action must be a cause of action for breach of the duties declared by § 501(a).

In sum, "the text and remedial structure of § 501(a) and (b), read together, imply both federal rights and a federal remedy for labor organizations against union officers who violate their statutory duties." Pet. App. 25a. Indeed, the only serious question is whether to call that labor organization breach of duty cause of action express or implied. *See Key Tronic Corp. v. United States*, 511 U.S. 809, 818 n. 11(1994) ("to say that A shall be liable to B is the *express* creation of a right of action").

C. The petition's effort to obfuscate the clear meaning of the statutory text by resort to bits and pieces of the legislative history fails. *See* Pet. 18-25. "The legislative history concerning § [501] plainly supports the conclusion that Congress meant what it said" in that provision. *Escondido Mutual Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765, 775 (1984).

The reason advanced for including a provision in the LMRDA declaring the fiduciary obligations of union officers was that the state law had proven inadequate in that regard. *See* S. Rep. No. 187, 86th Cong., 1st Sess. 72 (April 14, 1959) (Minority Views), reprinted in NLRB, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, vol. 1, p. 468 (1959) ("Leg. Hist.") ("Union officials alone seem to be free from what has become a normal, in fact a universal, obligation of officials simi-

larly situated."). Senator Goldwater, who was a principal proponent of adding a provision on fiduciary duties, elaborated on this point as follows:

> "Of course, today the situation is that virtually all groups, except labor organizations, require fiduciary responsibility on the part of their officials. The minister of the church which my friend, the Senator from North Dakota, attends is required by State law to have fiduciary responsibility – as is true in the case of all other nonprofit organizations. Yet the leaders of labor organizations are not required to have similar fiduciary responsibility.
>
> "Likewise, the president of the Red Cross, the president of the YMCA, and the president of the YWCA are required to have fiduciary responsibility, as spelled out in the State laws which relate to nonprofit organizations. On the other hand, a union leader is not required to have such fiduciary responsibility.
>
> "We propose this amendment only in order to provide some relief in that situation, because I know of no existing law which makes possible the recovery of funds which are improperly taken from a labor organization by one of its leaders. For instance, the vast sums of money which Dave Beck took from his union can never be recovered by law, according to my understanding." 105 Daily Cong. Rec. 5859 (April 23, 1959), 2 Leg. Hist. 1133.

Against that background, it is inconceivable that the LMRDA Congress did not provide labor organizations a federal cause of action against union officers who breach the duties declared in § 501(a) or relegated unions to what Congress regarded as the inadequate state law of union officer fiduciary duty. And, it utterly defies reason to suppose that Congress intended to require, as a precondition to bring-

ing suit under § 501(b), that union members request that their union invoke the inadequate means provided by state law for redressing fiduciary breaches and then bar the members from enforcing the federal duties declared in § 501(a) if the union does invoke the inadequate state remedies.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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140

(3)

No. 09-196

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JOSEPH P. WARD,

Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

I. THE SPLIT AMONG THE CIRCUITS IS WIDELY ACKNOWLEDGED, AND NINTH CIRCUIT LAW PLAINLY REJECTS AN IMPLIED CAUSE OF ACTION FOR UNIONS UNDER SECTION 501 1

II. RESPONDENT'S DEFENSE OF THE DECISION BELOW ON THE MERITS ONLY UNDERSCORES THE NEED FOR THIS COURT'S REVIEW 6

CONCLUSION 10

TABLE OF AUTHORITIES

Page(s)

Cases

Bldg. Material & Dump Truck Drivers, Local 420 v. *Traweek*, 867 F.2d 500 (1989) 1, 2, 3, 4

Dunlop-McCullen v. *Pascarella*, No. 97-Civ.-0195(PLK)(DFE), 2002 WL 31521012 (S.D.N.Y. Nov. 13, 2002) 5

Guidry v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365 (1990) 4

Int'l Longshoremen's Ass'n, AFL-CIO v. *Spear, Wilderman, Borish, Endy, Spear & Runckel*, 995 F. Supp. 564 (E.D. Pa. 1998) 5, 8

Int'l Longshoremen's Ass'n, Steamship Clerks Local 1624, AFL-CIO v. *Va. Int'l Terminals, Inc.*, 914 F. Supp. 1335 (E.D. Va. 1996) 5

Int'l Union of Elec., Elec., Salaried, Mach. & Furniture Workers, AFL-CIO v. *Statham*, 97 F.3d 1416 (11th Cir. 1996) 2, 4

Local 15, Int'l Bhd. of Elec. Workers v. *O'Reilly*, No. 02 C 6464, 2003 WL 29896 (N.D. Ill. Jan. 2, 2003) 6

TABLE OF AUTHORITIES—continued

Page(s)

Local 191, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, and Helpers of Am. v. *Rossetti*, Civ. A. No. B-90-74(WWE), 1990 WL 128241 (D. Conn. Aug. 23, 1990) 8

Local 1150 Int'l Bhd. Of Teamsters v. *SantaMaria*, 162 F. Supp. 2d 68 (D. Conn. 2001) 7

Service Employees International Union v. *Rosselli*, No. CV 08-2777-JFW, 2008 WL 3342721 (C.D. Cal. July 22, 2008) 2

Service Employees International Union v. *Rosselli*, No. C 09-00404 WHA, 2009 WL 1382259 (N.D. Cal. May 14, 2009) ... 1, 2, 3

United Transp. Union v. *Bottalico*, 120 F. Supp. 2d 407 (S.D.N.Y. 2000) 5, 7, 8

Other Authorities

105 Cong. Rec. A8516 ..... 9, 10

105 Cong. Rec. S5858 9

I. THE SPLIT AMONG THE CIRCUITS IS WIDELY ACKNOWLEDGED, AND NINTH CIRCUIT LAW PLAINLY REJECTS AN IMPLIED CAUSE OF ACTION FOR UNIONS UNDER SECTION 501

1. Respondent does not contest that this case presents an important and substantial question of federal jurisdiction, nor could it deny that both the Seventh Circuit and district court below—along with numerous other federal courts (see Pet. 10-14)—recognized the circuits' "opposite conclusions" on that question. Pet. App. 15a; see also Pet. App. 31a. Respondent's sole argument against *certiorari* (aside from its views on the merits, see Opp. 5-10) is premised on a single district court opinion that plainly misreads Ninth Circuit law.

In *Service Employees International Union* v. *Rosselli* (*Rosselli II*), No. C 09-00404 WHA, 2009 WL 1382259 (N.D. Cal. May 14, 2009), the district court inexplicably suggested that, when the Ninth Circuit, in *Building Material & Dump Truck Drivers, Local 420* v. *Traweek*, 867 F.2d 500 (1989), dismissed, for lack of subject matter jurisdiction, a union's claim that its officials breached fiduciary duties under 29 U.S.C. § 501(a), the court was applying only *Section 501(b)*, and neglected to consider the implications of *Section 501(a)*. As a result, the *Rosselli II* court surmised, the *Traweek* decision is not controlling in a case in which a union alleges a private cause of action under Section 501(a).

That view attributes to the *Traweek* court a perversely myopic approach to statutory construction. Indeed, one need look no further than another district court's decision *in related litigation between the same*

parties to find a well-reasoned rejection of the odd position taken in *Rosselli II*, and now advanced by respondent. In *Service Employees International Union* v. *Rosselli* (*Rosselli I*), No. CV 08-2777-JFW, 2008 WL 3342721, at *2-*3 (C.D. Cal. July 22, 2008), the district court explained that

> In interpreting [Section 501], the Ninth Circuit has held that labor organizations or unions cannot bring suit under this statute. * * * Although Plaintiff argues that the Ninth Circuit only precluded a union suit under section 501*(b)*, and not under section 501*(a)*, the Court disagrees. *The Ninth Circuit clearly meant to preclude suit under section 501 in its entirety.*

Id. at *3 (citing *Traweek*, 867 F.2d at 506) (final emphasis added). The *Rosselli I* district court acknowledged that the Eleventh Circuit had reached a contrary conclusion. *Id.* at *3 n.1 (citing *Int'l Union of Elec., Elec., Salaried, Mach. & Furniture Workers, AFL-CIO* v. *Statham*, 97 F.3d 1416, 1420 (11th Cir. 1996)). But the district court recognized that it was "bound by the Ninth Circuit's decision in *Traweek*" and therefore dismissed the union's claim with prejudice. *Id.* at *3 & n.1.

That is the only plausible reading of *Traweek*. It borders on frivolity to characterize the Ninth Circuit's decision as "'pertain[ing] only to Section 501(b) and *not* to Section 501(a).'" Opp. at 4 (quoting *Rosselli II*, 2009 WL 1382259, at *2). Indeed, in *Traweek* itself, the Ninth Circuit said that "[t]he issue posed" was "whether a union * * * *can bring a § 501 suit*"—not, as respondent (and *Rosselli II*) suggest, a Section 501(b) suit in particular. 867 F.2d at 506 (emphasis

added). Unlike the Seventh Circuit in this case, the Ninth Circuit answered that question in the negative, holding that a union "does not need * * * the operation *of § 501* to sue for recovery" from its own officials. *Ibid.* (emphasis added). The court invoked "the federal policy of noninterference in the internal affairs of unions and labor matters," *ibid.*, which would have been a strange ground on which to rely if the court held open the possibility that the very same federal interference was called for by *another part of the same section of the same statute.*

It is not altogether surprising that the district court in *Rosselli II* so plainly misread the holding in *Traweek*, since it likewise mischaracterized *Traweek*'s underlying dispute, and on that faulty premise concluded that the decision was not even on-point. See 2009 WL 1382259, at *2. In *Traweek*, the court of appeals reversed, for lack of subject matter jurisdiction, a $55,000 judgment in favor of a union against two of its former officials—one who had been the union's CEO and secretary-treasurer, and another who had been its vice president. See 867 F.2d at 503-505. The judgment was in the amount of various checks the officials had written against union funds to cover the attorneys' fees that a third union official incurred while under indictment for arson. See *ibid.* But in *Rosselli II*, the district court asserted that *Traweek* involved only "a union suit against a mere member (for unpaid dues)," 2009 WL 1382259, at *2, and based on that misreading it concluded that "*Traweek* had no occasion to consider the fact pattern here at issue": a union's challenge to its former officers for a breach of fiduciary duty. *Ibid.* Having fundamentally misread the facts in *Traweek*, it is not

surprising that *Rosselli II* misread the holding as well.

Respondent's exceedingly narrow view of *Traweek* also swims against a torrent of federal cases reading that decision to hold that unions do not have a cause of action to sue their officials for breach of the duties described in Section 501(a). In this case, the Seventh Circuit explained that "[d]istrict and circuit courts alike are divided on whether § 501 creates an implied federal cause of action for labor organizations"; and although it recognized such a cause of action, it conceded that *Traweek* had reached the "opposite conclusion." Pet. App. 14a & n.6. The district court in this case likewise explained that "the Ninth Circuit construed *Section 501* of the LMRDA as not creating a right of action for unions '[b]ecause of the federal policy of noninterference in the internal affairs of unions and labor matters.'" Pet. App. 33a (quoting *Traweek*, 867 F.2d at 506) (emphasis added).

In addition to the decisions below, the Eleventh Circuit also recognized that *Traweek* holds "that *section 501* does *not* create a cause of action that can be asserted by a union." *Statham*, 97 F.3d at 1418 n.2 (first emphasis added). This Court, too, has pointed to *Traweek* as an example of where courts have taken "inconsistent positions on the question whether a union may bring suit *under § 501*." *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 374 n.16 (1990) (emphasis added). Similarly, many of the district courts that have struggled with the question presented in this case have acknowledged that *Traweek* bars union lawsuits to enforce Section 501(a) in the Ninth Circuit. As one such court explained, *Traweek* "emphasiz[ed] the

plain language of § 501(b) and [held] that *unions could not pursue a claim under § 501(a).*" *Int'l Longshoremen's Ass'n, Steamship Clerks Local 1624, AFL-CIO* v. *Va. Int'l Terminals, Inc.*, 914 F. Supp. 1335, 1340 n.3 (E.D. Va. 1996) (emphasis added); see also *Dunlop-McCullen* v. *Pascarella*, No. 97-Civ.-0195(PLK)(DFE), 2002 WL 31521012, at *8 (S.D.N.Y. Nov. 13, 2002) (describing *Traweek*'s "holding that unions cannot sue under § 501"); *United Transp. Union* v. *Bottalico*, 120 F. Supp. 2d 407, 408 (S.D.N.Y. 2000) (recognizing that the Ninth and Eleventh Circuits "have considered whether a union may sue under § 501, and have reached different conclusions"); *Int'l Longshoremen's Ass'n, AFL-CIO* v. *Spear, Wilderman, Borish, Endy, Spear & Runckel*, 995 F. Supp. 564, 568 n.7 (E.D. Pa. 1998) (calling *Traweek* a case "finding no jurisdiction for § 501 suits brought by unions").

In short, the Ninth Circuit's decision in *Traweek* is flatly at odds with the Seventh Circuit's holding below and the Eleventh Circuit's holding in *Statham*. Respondent's tortured distinction of *Traweek* is merely an attempt to evade this Court's review of an important question of federal law.

2. Contrary to respondent's wishful thinking (Opp. 4), nothing about *Rosselli II* makes it "all but certain" that the Ninth Circuit will reconsider *Traweek*. *Rosselli II* itself has yet to be resolved on the merits, and there is no reason to believe that the threshold jurisdictional question will ever be appealed in that case. Moreover, even if a case squarely presenting the issue someday finds its way to the appellate court, only the *en banc* court can overrule *Traweek*, and there is no reason to assume

that Ninth Circuit is "certain" to do so. This Court's review is the far surer path to providing needed guidance on the question presented.

II. RESPONDENT'S DEFENSE OF THE DECISION BELOW ON THE MERITS ONLY UNDERSCORES THE NEED FOR THIS COURT'S REVIEW

The bulk of respondent's brief simply previews its arguments on the merits (see Opp. 5-10), and thus provides no reason to deny further review. Respondent does not—nor could it—contend that the Seventh Circuit faithfully applied the presumption that statutes containing an express cause of action do not imply additional causes of action. See Pet. 15-18. Instead, respondent blithely asserts that no such "negative inference" exists (Opp. 6), and that Section 501 "cannot support any other reading" (Opp. 5) than the one adopted by the court of appeals below. But those contentions are the subject of vigorous debate among the lower courts—debate that calls out for this Court's review.

1. Respondent's primary argument on the merits is that Sections 501(a) and (b) can *only* be read to imply a cause of action for unions. Opp. 6-8. The Ninth Circuit in *Traweek*, and a plethora of well-reasoned district court opinions, have reached the contrary conclusion, however, holding that respondent's preferred construction of the statute is *not even the more natural one* (let alone the "only" one). Section 501's text, those courts have explained, provides no evidence that Congress intended to imply a cause of action for unions. See, *e.g.*, *Local 15, Int'l Bhd. of Elec. Workers* v. *O'Reilly*, No. 02 C 6464, 2003 WL 29896, at *3 (N.D. Ill. Jan. 2, 2003) ("[A] *plain*

reading of Section 501(a)'s language does not create a cause of action for unions. Section 501(a) only sets forth fiduciary duties.") (emphasis added); *Local 1150 Int'l Bhd. Of Teamsters* v. *SantaMaria*, 162 F. Supp. 2d 68, 76 (D. Conn. 2001) ("[T]he statutory language * * * provide[s] *no basis* for the implication of a cause of action for [a union] under § 501(a).") (emphasis added); *Bottalico*, 120 F. Supp. 2d 407, 408 ("The *plain language* of § 501 cannot be read to create a claim for unions.") (emphasis added).

Moreover, it is not the case that "the petition says barely a word about the text of § 501(a)." Opp. 6. As the Petition contends at length (at 23-25), the Seventh Circuit inappropriately assumed that, by listing a set of fiduciary duties in Section 501(a), Congress necessarily intended to grant *unions* (as opposed to *union members*) a federal right of action to enforce them. Respondent thinks that such a leap is warranted, and then implausibly suggests that the onus shifts *to petitioner* to support an "infer[ence] that § 501 *does not* create a labor organization cause of action from the fact that § 501(b) creates a limited cause of action" for union members. Opp. 6 (emphasis added). That gets the analysis exactly backward, however, and highlights the court of appeals' failure—mirrored by respondent's brief—to address forthrightly the presumption that Congress intended only the cause of action it created in Section 501(b) as a federal remedy to enforce the duties listed in Section 501(a). See Pet. 15-18.

2. Also unpersuasive is respondent's view (Opp. 6-8) that, by prescribing certain preconditions on a union member's cause of action in Section 501(b), Congress intended to confer on unions as well the

right to file a *federal* cause of action to sue their officials for a breach of fiduciary duty. To be sure, a union member cannot bring a claim under Section 501(b) unless the union has declined to pursue its own remedies within a reasonable time after the member demanded that it do so. But it begs the question to assert that those remedies *must* include a cause of action *under the federal statute*. As one district court has explained, Section 501(b) operates perfectly well without any implication that Congress intended to provide unions with a federal cause of action, given that "the union could sue the officer under state law in state court." *Bottalico*, 120 F. Supp. 2d at 409; see also *Local 191, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, and Helpers of Am.* v. *Rossetti*, Civ. A. No. B-90-74(WWE), 1990 WL 128241, at *2 (D. Conn. Aug. 23, 1990) ("Under § 501, the union member must first request that the union, *in state court or pursuant to some other federal statute*, sue the union official suspected of wrongdoing.") (emphasis added). Section 501(b) also provides that a union may seek "other appropriate relief"—a recognition by Congress that "a labor organization might pursue a remedy in a non-judicial forum, *i.e.*, charges brought pursuant to the union's constitution." *Spear, Wilderman, Borish, Endy, Spear & Runckel*, 995 F. Supp. at 572; see also Pet. 20-21, 23.

3. Finally, respondent does not deny that Section 501's legislative history indicates that Members of Congress who shepherded Section 501(a)'s fiduciary duties (and its precursors) through the legislative process recognized that Congress would need to address *separately* whether—and in what form—a federal remedy should exist to enforce

those duties. See Pet. 21-23. Those examples of how Members understood the statute do not "obfuscate" some allegedly "clear meaning of the statutory text" (Opp. 8); instead, they demonstrate that—to many of the statute's drafters and proponents—the effect of enacting Section 501(a) without Section 501(b) would have been to provide no federal cause of action for anyone. Contra Opp. 6.

Nor does respondent's own "resort" to so-called "bits and pieces of the legislative history" (Opp. 8) undermine that observation. As an initial matter, contrary to respondent's assertion (at 8-9) Congress was not of a single mind that the common law dealt "inadequate[ly]" with a union official's fiduciary duties. See, *e.g.*, 105 Cong. Rec. S5858, reprinted at 2 National Labor Relations Board, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, at 1132 (NLRB Legislative History) ("In my opinion, the State laws * * * are adequate.") (statement of Sen. Kennedy).

Respondent also quotes Senator Goldwater at some length (Opp. 9), but he, too, explained that had Section 501 not included Section 501(b), it would have lacked *any federal remedy at all*. Upon passage of the LMRDA, Senator Goldwater compared the final bill to earlier Senate consideration of an amendment akin to a stand-alone Section 501(a): "On the Senate floor, an amendment was adopted imposing a fiduciary status on union officials * * *. *No remedy for breach of such obligation was provided.* * * * [The final bill] *provided such a remedy*—as described below." 105 Cong. Rec. A3518 (emphasis added), reprinted at 2 NLRB Legislative History 1852. The Senator then described the precise remedy found

in Section 501(b), before reiterating that "at no stage of the Senate bill was a remedy for breach of fiduciary duty provided. It is in both the [House] bill and the [final legislation.]" *Ibid.* Senator Goldwater, like many of his colleagues (see Pet. 22-23), recognized that Section 501(b)'s express cause of action is required in order for *any* party to bring an action in federal court to enforce Section 501(a)'s list of fiduciary duties. *Ibid.*

CONCLUSION

The petition for a writ of certiorari should be granted.

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